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EXTRADITION

A Treatise

on the Law relating to

FUGITIVE OFFENDERS

BY

SIR FRANCIS PIGGOTT, K_{T.}, M.A., LL.M.,
CHIEF JUSTICE OF HONGKONG

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TO MY FRIEND
A. V. DICEY,
WHOSE "CONFLICT OF LAWS" HAS BEEN
AS A LANTERN GUIDING ME THROUGH THE
TANGLE OF A CENTURY'S JURISPRUDENCE,
THIS LAST VOLUME IS DEDICATED
IN GRATEFUL RECOGNITION.

HONG KONG,
SEPTEMBER, 1910.

PREFACE.

THE EXTRADITION ACT stands, I think, as a monument of successful draftsmanship. It was no light task to devise an entirely new system of procedure, which, while it was based on a principle which runs counter almost at every point to doctrines which lie at the root of English liberty, should yet conform to those doctrines in all essential particulars. And not a system of procedure alone had to be devised, but a novel doctrine of jurisprudence which was to become the condition precedent to the procedure being put in force. This doctrine, as finally elaborated in the Act of 1873, that the test whether a fugitive shall be surrendered for a crime committed in a foreign country must be that the act is also a crime by English law, is not only arbitrary in the extreme, not only seems to violate elementary principles of jurisprudence, but is scarcely conceivable, hardly expressible intelligibly in legal thought. Yet the Judges have rough-hewn it into a working principle; and not only convenience has claimed it as her own, but it has so established itself, that almost one has come to believe it could take rank as a doctrine inherent to scientific law-making, a doctrine *in gremio senatus*, only waiting agreement between the nations to call it into working practice. Yet it is as far removed from an ideal principle of extradition as that other system, which Evelyn tells us he saw practised in Switzerland, and wondered at—

“At the side of the field, is a very noble Pall-Mall, but it turns with an elbow. There is also a bowling-place, a tavern, and a trey-table, and here they ride their menaged horses. It is also the usual place of public execution of those who suffer for any capital crime, though committed in another country, by which law divers fugitives have been put to death, who have fled hither to escape punishment in their own country.”

The successful statute makes little fuss, causes little argument in the Courts. And judged by this standard this statute must be pronounced very successful; for in the forty years of its existence there have not been more than about seventy cases worthy to be reported: and of its twin, the Fugitive Offenders Act, only half-a-dozen. That it is not a very scientific piece of drafting is another matter; and there are many points yet to be unravelled, some of which I have attempted to throw light upon in this book.

I have devoted some space to the interesting subject of unilateral extradition, a task much simplified by the admirable drafting of the Cyprus Order in Council.

I have also attempted to derive from the most unweildy mass of the Treaties some principles which have not yet attracted attention. And here again I trace in their evolution the working of a high intelligence, of a mind deeply versed in jurisprudence; for they deal with some very abstruse questions which the Act does not touch upon. The trouble is that the expression of them is clouded by ever-varying and very unscientific drafting. But Treaties are not Acts of Parliament, easily amended when slips are discovered. The model Treaty is yet to be negotiated; it is one to which all the Powers signatory to the existing Treaties should adhere; and it is worth the trouble, for the "peace" of the world depends on the mutual surrender of its criminals being carried out swiftly and smoothly.

There is one field of enquiry into which I have not entered; the decisions of the Courts of the Colonies and of the United States. The materials are not available in the Colony in which I work; and the two other text-books on the subject, Sir Edward Clarke's and Messrs. Biron and Chalmers', contain the result of their authors' research.

The series of works on Nationality and Jurisdiction, planned many years ago, comes to a close with this volume. It is impossible to reckon all the help I have received from authors who have laboured in the same field. I have endeavoured in dedicating this last volume to Mr. Dicey, whose name is a household word amongst lawyers of all nationalities, in some measure to acknowledge the great debt which I and all writers on international law owe to him.

F. T. P.

Hongkong

September, 1910.

TABLE OF CONTENTS.

Chapter I.	
<i>General Considerations</i>	5
Chapter II.	
<i>The Report of the Royal Commissioners</i>	17
Chapter III.	
<i>The Statutory Surrender of Fugitive Criminals to Foreign Countries</i>	29
Chapter IV.	
<i>Extradition in the Colonies</i>	177
Chapter V.	
<i>Extradition without Agreement, and under Unilateral Agreements</i>	188
Chapter VI.	
<i>Extradition of Deserters from Merchant ships</i>	197
Chapter VII.	
<i>The Treaties</i>	199
Chapter VIII.	
<i>Extradition in the British Dominions.—The Fugitive Offenders Act</i>	

APPENDIX.

I— <i>The Extradition Acts</i>	5
II— <i>The Extradition Treaties</i>	25
III— <i>Special Extradition Legislation</i>	263
<i>Canada</i>	263
<i>Cyprus</i>	276
<i>Hong Kong</i>	287
<i>Straits Settlement</i>	291
IV— <i>The Fugitive Offenders Act, and Orders in Council</i> ...	306

TABLE OF STATUTES.

	PAGE
31 Car. II, c. 2 [Habeas Corpus Act, 1678]	8, 12, 14, 76, 155, 274
7 Anne, c. 5 [British Nationality]... ..	67
4 Geo. II, c. 21 [British Nationality]	67
13 Geo. III, c. 21 [British Nationality]	67
46 Geo. III, c. 54 [Offences at Sea Act, 1806]	290
57 Geo. III, c. 53 [Murders Abroad Act, 1817]	11, 246, 247, 290,
5 Geo. IV, c. 113 [Slave Trade Act, 1824]	147
1 & 2 Vict. c. 59 [International Copyright Act, 1838]	38
6 & 7 Vict. c. 34 [Colonial Arrest Act, 1843]	274
————— c. 75 [French Convention Act, 1843]	29, 31, 33, 106
————— c. 76 [United States Convention Act, 1843]... ..	29, 31, 33, 176
————— c. 98 [Slave Trade Act, 1843]	147
8 & 9 Vict. c. 120 [Extradition Act, 1845]... ..	29
11 & 12 Vict. c. 42 [Indictable Offences Act, 1848]	
... ..	95, 150, 154, 280, 283
————— c. 44 [Justices Protection Act, 1848]	271
12 & 13 Vict. c. 25 [Portuguese Deserters Act, 1849]... ..	198
14 & 15 Vict. c. 99 [Law of Evidence Act, 1851]... ..	128
15 & 16 Vict. c. 26 [Foreign Deserters Act, 1852]	197
19 & 20 Vict. c. 113 [Foreign Tribunals Evidence Act, 1856]	168
20 & 21 Vict. c. 3 [Penal Servitude Act, 1857]	223
24 & 25 Vict. c. 94 [Accessories and Abettors Act, 1861]	148, 149
————— c. 96 [Larceny Act, 1861]	
... ..	114, 117, 122, 132, 133,* 206, 232
————— c. 97 [Malicious Damage Act, 1861]	
... ..	132, 138,* 219, 223, 226, 232, 234
————— c. 98 [Forgery Act, 1861]... ..	139,* 232
————— c. 99 [Coinage Offences Act, 1861]... ..	140*
————— c. 100 [Offences against the Person Act, 1861]	
... ..	11, 141,* 143, 149, 290
25 & 26 Vict. c. 70 [Denmark Convention Act, 1862]... ..	29, 31, 33
29 & 30 Vict. c. 121 [Extradition Act, 1866]	29, 106
31 & 32 Vict. c. 37 [Documentary Evidence Act, 1868]	41
————— c. 116 [Larceny Act, 1868]	135
32 & 33 Vict. c. 62 [Debtors Act, 1869]... ..	146
33 & 34 Vict. c. 14 [Naturalization Act, 1870]	66, 67, 237, 238
————— c. 50 [Foreign Enlistment Act, 1870]	235
————— c. 52 [Extradition Act, 1870]... ..	29, <i>App. v. 5</i>
preamble	29, 32

* These Acts are analysed at the pages printed in italics.

	PAGE
33 & 34 Vict. c. 52 [Extradition Act, 1870],— <i>continued.</i>	
s. 2	37
s. 3	42, 64, 81, 226
sub-s. (1)... ..	44, 57, 67, 102, 104, 127, 173, 180
sub-s. (2)... ..	60, 172, 257
sub-s. (3)... ..	63, 253
sub-s. (4)... ..	63
s. 4	40, 43, 63
s. 5	40, 43
s. 6	64, 71, 242, 248
s. 7	44, 79, 80, 178, 260
s. 8	81, 82, 83, 85, 162, 167, 260, 263, 267
s. 9	45, 87, 101, 103, 104, 152, 263, 271, 298
1st paragraph	94
2nd paragraph	98
s. 10	81, 98, 105, 127, 150, 261, 263
s. 11	80, 155, 163, 180, 263
s. 12	165, 267, 268
s. 13	89, 167
s. 14	96, 99, 128, 153, 170, 262
s. 15	86, 96, 128
s. 16	166
s. 17	38, 177, 178, 180, 185
s. 18	181, 183, 185
s. 19	34, 37, 38, 44, 171, 173, 176, 188, 191
s. 21	42
s. 22	42
s. 23	42, 187
s. 24	45, 168
s. 25	164, 166, 179
s. 26	64, 85, 106, 128, 177, 182
s. 27	62, 174, 193
schedule... ..	112, 130, 216, 232, <i>Appdx.</i> 15
34 & 35 Vict. c. 32 [Criminal Law Amendment (Violence) Act, 1871]	143
36 & 37 Vict. c. 60 [Extradition Act, 1873]	29, 45, 64, 79, 147, 167, 169, <i>Appdx.</i> 20
schedule... ..	112, 130, 216, 232, 233, <i>Appdx.</i> 15
----- c. 66 [Judicature Act, 1873]	158
----- c. 71 [Malicious Injury (salmon rivers)]	138
----- c. 88 [Slave Trade Act, 1873]... ..	10, 147, 234, <i>Appdx.</i> 16
37 & 38 Vict. c. 27 [Courts (Colonial) Jurisdiction Act, 1874]	291
38 & 29 Vict. c. 24 [Falsification of Accounts Act, 1875]	122, 136, 220
----- c. 86 [Conspiracy and Protection of Property Act, 1875]	143
----- c. 94 [Offences against the Person Act, 1875]	143
39 & 40 Vict. c. 20 [Amending Portuguese Deserters Act]	198
40 & 41 Vict. c. 2 [Larceny of Treasury Bills]	139
42 & 43 Vict. c. 49 [Summary Jurisdiction Act, 1879]	288
43 & 44 Vict. c. 33 [Larceny (postal orders)]	135
----- c. 35 [Wild Birds Protection Act, 1880]	10, 234

TABLE OF STATUTES.

xiii

	PAGE
45 & 45 Vict. c. 69 [Fugitive Offenders Act, 1881]	306
... .. 94, 189, 274 <i>et seq.</i> , <i>Appdx.</i>	306
46 Vict. c. 3 [Explosive Substances Act, 1883] ...	10, 102, 234
46 & 47 Vict. c. 51 [Corrupt Practices Act, 1883] ...	145
c. 52 [Bankruptcy Act, 1883] ...	146
c. 55 [Larceny (documents resembling cheques)] ...	140
47 & 48 Vict. c. 76 [Post Office Protection Act, 1884] ...	139, 234
48 & 49 Vict. c. 49 [Submarine Telegraph Act, 1885] ...	10, 234
c. 69 [Criminal Law Amendment Act, 1885]	11, 143, 145, 230, 234
50 & 51 Vict. c. 55 [Sheriffs Act, 1887]... ..	294
53 & 54 Vict. c. 37 [Foreign Jurisdiction Act, 1890] ...	191, 278
54 & 55 Vict. c. 69 [Penal Servitude Act, 1891] ...	223
56 & 57 Vict. c. 54 [S.L.R. Act (No. 2), 1893] ...	224
57 & 58 Vict. c. 60 [Merchant Shipping Act, 1894] ...	197, 287, 288
58 & 59 Vict. c. 33 [Extradition Act, 1895] ...	29, 197, 204, <i>Appdx.</i> 22
59 & 60 Vict. c. 52 [Larceny Act, 1896] ...	126, 137
61 & 62 Vict. c. 36 [Criminal Evidence Act, 1898] ...	105, 159
63 & 64 Vict. c. 2 [Larceny (War Bonds)] ...	139
1 Edw. VII, c. 10 [Larceny Act, 1901] ...	136
4 Edw. VII, c. 15 [Prevention of Cruelty to Children Act, 1904]	142, 144, 145
5 Edw. VII, c. 18 [Aliens Act, 1905] ...	18
6 Edw. VII, c. 15 [Extradition Act, 1906] ...	29, 35, 145, <i>Appdx.</i> 23
7 Edw. VII, c. 16 [Evidence, Colonial Statutes, Act, 1907] ...	299

TABLE OF CASES.

	PAGE		PAGE
ARTON, <i>re</i> ...	34, 49, 50, 57, 249	R. <i>v.</i> Clifford ...	272
Arton, <i>re</i> , (No. 2) ...	...121 <i>et seq.</i> ,	R. <i>v.</i> Cohen ...	301
151, 156, 220, 232, 300		R. <i>v.</i> Dawson ...	75
BELLENCONTRE, <i>re</i> ...	108, 117,	R. <i>v.</i> Daye... ..	170
151, 207, 233		R. <i>v.</i> Dix	114
Besset, <i>ex parte</i> ...	7, 8, 155	R. <i>v.</i> Ganz... ..	69, 79, 107, 160
Bluhm, <i>re</i>	162, 163	R. <i>v.</i> Hole... ..	297
Borrovsky, <i>re</i>	272	R. <i>v.</i> Hutchinson ...	11, 13, 246
Bouvier, <i>re</i>	43, 61, 176	R. <i>v.</i> Jacobi	107, 114
Buddenborg, <i>ex parte</i> ...	243, 245	R. <i>v.</i> Keyn	71
Burrows <i>v.</i> Jemino	246	R. <i>v.</i> Kimberley ...	...12, 13
CALBERLA, <i>ex parte</i>	245, 250	R. <i>v.</i> Kohn	114
Castioni, <i>re</i>	51 <i>et seq.</i> , 157	R. <i>v.</i> Krans	93
Coppin, <i>re</i>	106, 119, 129,	R. <i>v.</i> Lundy ... ..	...11, 14
245, 259		R. <i>v.</i> Lushington, <i>see ex parte</i> Otto.	
Counhaye, <i>re</i>	35, 36, 98, 99,	R. <i>v.</i> Maurer	157
105, 148, 169, 262		R. <i>v.</i> Nillins	70, 102, 247
Crowley's case	155	R. <i>v.</i> Phillips	301
EAST INDIA CO. <i>v.</i> CAMPBELL... ..	12	R. <i>v.</i> Portugal	159
<i>Franconia, the, see R. v. Keyn.</i>		R. <i>v.</i> Roche	246
Frost, <i>re</i>	95, 295	R. <i>v.</i> Sattler	35, 92
GALWEY, <i>re</i>	45, 66, 82, 125,	R. <i>v.</i> Spilsbury,	96, 292,
156, 161, 237, 265		297, 299	
Guerin, <i>re</i>	67, 68, 154, 237	R. <i>v.</i> Vyner	300
Guerin, <i>ex parte</i>	68	R. <i>v.</i> Weil	9, 27, 86, 90, 92, 158
HONG KONG, ATTORNEY GEN- ERAL OF, <i>v.</i> KWOK A SING		R. <i>v.</i> Wilson	35, 36, 39, 44,
72 <i>et seq.</i> ,	194	67, 80, 112, 163, 213	
Huguet, <i>ex parte</i>	154, 156	R. <i>v.</i> Zossenheim	98, 103,
Huntington <i>v.</i> Attrill	130	SHORT <i>v.</i> DEACON [U.S.] ...	62
MEUNIER, <i>re</i>	57	Siletti, <i>ex parte</i>	155, 157, 293
Meses, <i>ex parte</i>	118	Spilsbury <i>v.</i> R	297
Mure <i>v.</i> Kaye ... ..	...13, 14	TERRAZ, <i>ex parte</i>	92, 118, 130
OTTO, <i>ex parte</i>	270, 293	Tivnan, <i>re</i>	72, 73, 76, 248
<i>Parlement Belge, the</i>	166	UNITED STATES, <i>v.</i> GAYNOR ...	124,
Percival <i>ex parte</i>	293	156	
Piot, <i>ex parte</i>	108	United States, <i>v.</i> Rauscher,	
Pooley <i>v.</i> Whetham	173	[U.S.]	15, 26, 61, 203, 301
R. <i>v.</i> ADAMSON... ..	88	VAN DER AUWERA, <i>ex parte</i> ...	129,
R. <i>v.</i> Azzopardi	246	255	
		WALKER <i>v.</i> BAIRD	8
		Windsor, <i>re</i>	119, 221
		Wong Ka Chong, <i>re</i> , [Hong	
		Kong]	50
		Woodall, <i>re</i>	15, 43, 61
		Woodhall, <i>ex parte</i>	158

CORRIGENDA.



- p. 27. 4th line from bottom, and marginal note, for *ex parte Weil* read *R. v. Weil*.
- p. 34. line 16, for *may help* read *may not help*.
- p. 53. 9th line from bottom, for *serveral* read *several*.
- p. 56. line 20, for *use to be limited* read *use be limited*.
9th line from bottom, for *à* read *â*.
- p. 59. marginal note, delete "on."
- p. 69. 1st line, delete the first "the."
- p. 107. last marginal note for *necessary* read *necessity*.
- p. 110. 12th line from bottom, delete the *commo* after "Yet."
- p. 111. line 18, for *two-fold* read *twofold*.
- p. 124. the first marginal note should be opposite the paragraph beginning "By
this process."
- p. 126. 2nd marginal note, for *Section XI* read *Section IX*.
- p. 132. line 14, for *the for* read *for the*.
- p. 144. 12th line from bottom, for *abovehe* read *above the*.
- p. 198. 1st marginal note, for *orders* read *Orders*.
2nd marginal note, for *Portugese* read *Portuguese*.
- p. 206. last line, for *harrassing* read *harassing*.
- p. 219. last marginal note, for *c. 96* read *c. 97*.
- p. 222. line 16, for *Offence* read *offence*.
- p. 223. 1st marginal note, for *c. 69* read *c. 97*.
- p. 232. last marginal note, for *c. 98* read *c. 97*.
- p. 234. 6th line from bottom in marginal notes, for *34* read *43*.

APPENDIX.

- p. 155. line 20, for *Monoco* read *Monaco*.
- p. 195. line 3, for *purposes* read *purpose*.
- p. 196. line 3, for *laws in such* read *laws for the time being in such*.
line 7, for *shall* read *may*.
- p. 323. in the *China and Corea Order*, for *art. 8* read *art. 88*.

I have specially to apologise for the error in printing Messrs. Biron & Chalmers' names throughout the book.

*THE
EXTRADITION ACT
AND THE
FUGITIVE OFFENDERS ACT.*

CHAPTER I.

General Considerations, 5.

SECTION I.

The Common Law principles involved, 5.

SECTION II.

The duty to extradite considered, 11.

SECTION III.

The Prerogative Powers involved in Extradition—The Treaties and the Statutes, 15.

CHAPTER II.

The Report of the Royal Commissioners, 17.

CHAPTER III.

The Statutory Surrender of Fugitive Criminals to Foreign Countries, 29.

SECTION I.

The position of Parliament in Extradition, 29.

SECTION II.

The application of the Act by Order in Council, 37.
Application of the Act, 42.

SECTION III.

The restrictions on Extradition—Political offences, 24.
Offences of a political character, 44.
Trial to be limited to the extradition offence, 60.

SECTION IV.

The Extradition of Subjects—Naturalized Subjects—Concurrent jurisdiction, 64.
The surrender of British subjects, 64.
Who are fugitives? 70.
Extradition in cases of crimes over which both States have concurrent jurisdiction, 71.

SECTION V.

The Requisition, and the Arrest 77.
Procedure by requisition to the Secretary of State, 79.
Summary procedure by way of direct application to the Magistrate, 84.

SECTION VI.

The Hearing, 94.
Remand and bail, 94.
Evidence taken abroad, 95.
Evidence, 99.
The foreign warrant, 105.

CHAPTER III.—Continued.**SECTION VI.—continued.**

Extradition limited to offences under English law, 109.
Receiving property stolen abroad: Act of 1896, 126.

SECTION VII.

The surrender of Convicted Persons, 127.

SECTION VIII.

Extradition offences by Statute, 130.

Offences under the schedule of 1870, 132.

Offences under the schedule of 1875, 133.

Larceny Act, 1861, and amending Acts, 133.

Malicious Damage Act, 1861, and amending Acts, 138.

Forgery Act, 1861, and amending Acts, 139.

Coinage Act, 1861, 140.

Offences against the Person Act, 1861, and amending Acts, 141.

Law of Bankruptcy, 146.

Slave Trade Acts, 147.

Accessories, 147.

SECTION IX.

The Committal and Surrender, or Discharge, 150.

Appeals from the Magistrate.—Habeas Corpus, 155.

Locus standi of the Foreign Government, 160.

The discharge, 161.

The end of the proceedings, 163.

SECTION X.

Special jurisdiction in certain cases, 165.

Crimes committed at Sea, 165.

Invalid fugitives, 167.

Taking evidence for Foreign States, 168.

SECTION XI.

The application of the Act to extradition to England by Foreign Countries, 170.

SECTION XII.

The repeal clause of the Act, 174.

CHAPTER IV.

Extradition in the Colonies, 177.

SECTION I.

The application of the Act to the Colonies, 177.

CHAPTER IV.—*Continued.***SECTION II.**

The application of the Treaties to the Colonies, 182.

SECTION III

The Extradition Laws of the Colonies, 182.

Colonies where the local legislation is alone in force, 185.

Colonies in which the Act as modified by local legislation is in force, 186.

CHAPTER V.

Extradition without agreement, and under Unilateral Agreements, 188.

SECTION I.

Extradition in Protectorates.—Foreign Jurisdiction, 188.

SECTION II.

The Cyprus Order in Council, and the Canadian Act of 1889, 190.

SECTION III.

The Treaty of Tientsin, art. XXI, 193.

CHAPTER VI.

Extradition of Deserters from Merchant Ships, 197.

CHAPTER VII.

The Treaties, 199.

SECTION I.

Preliminary Considerations, 199.

SECTION II.

Extradition Crimes by Treaty, 205.

SECTION III.

Principles governing the Criminal Law of Extradition, 215.

The turpitude of the offence, 216.

Note on the sub-division of offences by French law, 217.

Note on the English law as to minimum penalties, 223.

References to the law of one State, 224.

References to the laws of both States, 228.

SECTION IV.

Extradition crimes by statute and treaty combined, 231.

SECTION V.

The surrender of subjects.—Naturalized subjects, 235.

CHAPTER VII.—*Continued.***SECTION VI.***Political offences, 239.***SECTION VII.***Previous trial and discharge.—Pardon.—Limitation of punishment.—Concurrent jurisdiction over crimes, 241.**Note on the pleas "Autrefois acquit" and "Autrefois convict," 246.**Position of the law of the country applied to, 247.**Note on the extra-territorial provisions of the German Criminal Code, 252.***SECTION VIII.***Pendency of other proceedings 253.***SECTION IX.***Requisitions by several States, 255.***SECTION X.***Limitation of trial to the extradition crime, 257.***SECTION XI.***Convicted persons, 259.***SECTION XII.***The machinery clauses of the Treaties, 259.**The Argentine Treaty, arts. VIII to XII, 260.**The Belgian Treaty, arts. II to IV, 262.***SECTION III.***The subsequent proceedings, 267.**Time Table, 269.**Delivery of articles seized, 270.**Costs of extradition, 273.***CHAPTER VIII.***Extradition in the Empire.—The Fugitive Offenders Act, 274.*

EXTRADITION.

CHAPTER I.

General Considerations.

SECTION I.

The Common Law principles involved.

EXTRADITION is a political question, the law governing it having been created by statute and treaty. There is no law in the sense of recognised legal principles applicable to the subject; such law as is referred to in the cases, apart from the interpretation of the treaties and the statutes, is the common law of the land, with which extradition, or to be more accurate, the machinery for carrying extradition into effect, is entirely at variance. For the common law, in so far as it applies to the subject, deals with two questions—the personal liberty of all persons who come within the area of its application; the territoriality of all law, unless it is specially expressed to apply extra-territorially.

The common law principles, of personal liberty, and of the territoriality of law,

The law on these two questions combined can be expressed in one short sentence—A person who has not committed an offence against the laws of the country in which he is actually present is a free man, and is entitled to apply to the Courts to protect him from any violation of his personal liberty. From this bed-rock principle all subordinate principles are, or at least should be, deducible. But it is precisely this bed-rock principle which the law of extradition is designed to undermine in certain cases, as to which there is more or less agreement among all States. The necessity for such an agreement is practically admitted universally; though there are some countries with which England has not as yet concluded treaties.

with which extradition is at variance.

Chap. I.
Sec. I.

Extradition from the point of view of the lawyer, may, therefore, be divided into two branches—interpretation of statute and treaty combined, and the assertion of the common law, the spirit of which may be said to resent even statutory infringements of it. In every case argued before the Courts, we see the Attorney-General on behalf of the Executive, pressing the obligation to surrender to its utmost limit, the Judges resisting any encroachment on the common law over which they keep watch and ward, with all that scrupulous care which the mere mention of the “liberty of the subject” always invokes. Although the British subject is not surrendered in virtue of all the treaties, that expression is appropriate; for the allegiance which the alien in England owes to the law gives him also the right to its protection. This has led inevitably to the formulation of the right of the individual to protection against arbitrary, and therefore illegal, acts of the Executive, as if it were a distinct and special privilege accorded to foreigners.

So far as interpretation of the statute and the treaties, that is to say, the law proper of extradition, is concerned, it is unfortune that the statement of principles of general application, other than a few very general ones, is almost impossible. I cannot say that the nature of the subject, although it throws difficulties in the way, absolutely precludes systematic treatment and the evolution of rules; but the Act of 1870, except for one section, s. 19, only applies to one side of the question, the surrender of fugitive criminals by this country and its colonies; and the treaties by which the other side of the question is exclusively governed, though made more or less on a common plan, contain an infinite number of variations of language which make the deduction of principles extremely difficult.

It is much to be regretted that the right of the individual to the protection of the common law should have crystalized into the formula “right of asylum,” which is used not only in common parlance, but also in the decisions of the Courts; for that seems to set one country up as deliberately aiding by its protection those who offend against the laws of neighbouring States, of all acts the most unneighbourly. Apart from its being unscientific, the term connotes a deliberate invitation, such as tradition assigns to Romulus, to the malefactors of other countries to come within the peace of the King. Its only legal aspect is that it seems to have some affinity with the somewhat vague doctrine on which stress is laid in some civil cases, that they

The “right of
asylum.”

decline to recognise the penal laws of other countries, or to enforce civil judgments proceeding on them. This doctrine is perhaps not quite so arbitrary as the corresponding one which refuses recognition to the revenue laws of other countries; and it may possibly find its justification in this, that to do otherwise would be giving an unwarrantable extension to the criminal law of another country.

Chap. I.
Sec. I.

*cf. Foreign
Judgments,
Pt. I, p. 88.
cf. ib. p. 92.*

We must now revert to the doctrines of the common law, to which extradition is the exception: the right to liberty, and the locality of crime. The latter means that crime is local in its commission, local in its legal effect, local in its punishment. It is of course no more than a special illustration of the larger doctrine that all law is territorial: that is, local to the country in which it is promulgated; and this again is the special illustration of the still larger doctrine, that sovereignty is local, and its exercise circumscribed by the limits of the territory subject to the Sovereign. Each phase of this doctrine is involved in the common law right to liberty upon which extradition encroaches. But the Government of a country whose laws have been infringed is powerless in all its branches either to punish or bring to punishment a criminal who has escaped to another country; and the Government of the country to which he has escaped is equally powerless to punish, for its laws have not been infringed. Nor, for the same reason, can this Government authorise its officers to act in aid in bringing a criminal to punishment in the country from which he has escaped—"according to your argument our gaolers are gaolers for France without the convention," (Lord Denman, C.J., *in arg., ex parte Besset*)—and it is obvious that the officers of that country are powerless, for they have no mandate to act in the country to which he has escaped. It is a simple doctrine, but sometimes overlooked, that a person, subject or alien, who has not infringed the laws of the country in which he is actually present is immune from interference by its judicial or executive officers. Hence the person who has infringed the laws of a foreign country shares what we call the "liberty of the subject," and finds an asylum from the consequences of his act. This accords entirely with the English theory that a man is innocent until he is proved to be guilty. It must be confessed that the term "fugitive criminal," which is used in the Act, is not a very happy one, although it is accurately defined in the definition clause, for it begs the question of his guilt; he is, however, a fugitive from justice, because he is accused

The locality of
crime.

The right to
liberty.

exp. Besset.
6 Q.B. at p. 848.

Chap. I.
Sec. I.

of crime. If he has been convicted that is another matter. Yet it cannot be said that any theory on which extradition is usually justified warrants the treatment of convicted persons on the same principles as persons only accused of crime. But language has rather a habit of begging the question; and therefore it is most necessary to insist that the theory on which extradition rests is that the most habitual offender against the laws of a foreign country is as much entitled to his liberty in this country as the most innocent of Englishmen.

The right of a
fugitive to
habeas corpus.
31 Car. II, c. 2.

The writ of *habeas corpus* figures largely in extradition. I have ventured to suggest in another book[§] that it is not altogether clear whether all the provisions of the Act of Charles I apply to foreigners resident in this country. But in so far as the liberty which they share with subjects may be affected by attempts to extradite them, they are entitled to avail themselves at common law of the writ (*ex parte Besset*); and s. 11 of the Extradition Act, 1870, requires the magistrate when committing a fugitive criminal to prison to inform him of this fact: that is to say, that he can apply to the Courts to assist him and protect his right to be free, if the provisions of the statute and the treaty applicable to him have not been complied with.

exp. Besset.
6 Q. B. 481.

Extradition as a
political duty.

The duty to extradite as a common law duty of the Executive in aid of a general system of punishment of criminals is a pleasant myth; at the best it is a political duty. But even assuming this to be so, as some have endeavoured to maintain, and that it is involved in that large word "comity," the law is too clear to admit a doubt that it could not be acted on without risking an order from the Courts to set the man at liberty, and a collision, always to be avoided if possible, between the Judiciary and the Executive. No difficulty arises in the carrying out of such an order; for it is addressed to the person who has the actual custody, and the law does not allow him to set up an illegal order of his superior, even though the superior be one of the Sovereign's Secretaries of State (*Walker v. Baird*). Putting the matter shortly, this supposed duty to extradite, when it is endeavoured to reduce it to formal propositions, raises precisely the difficulties which the law of extradition, as it is contained in the treaties and the statutes combined, has endeavoured to cope with.

Walker v. Baird.
1892, A.C. 451.

It must not be supposed that this is a mere academic question. For though treaties are numerous, they are not universal at present; and in the case of countries with which no treaty has

§ see "Nationality," Part I, p. 178.

been entered into the question is a very practical one. Moreover, if the doctrine were sound it would obviously apply to offences not included in the case of treaties which do exist; unless the maxim *inclusio unius exclusio alterius* were prayed in aid, which it must be confessed has not much to do with the matter.

Chap. I.
Sec. I.

There is however one difficulty which I do not think has been seriously considered up to the present. The machinery of our law can only act to prevent, or redress illegal infringements of the law; and it is obvious that it can only prevent illegal extraditions if it is called on in time, and this only with regard to action by our own Executive. If a person should be extradited to England by a State with whom we have no treaty, he would be without remedy; for quite apart from the fact that the Act does not deal with extradition to this country, the man would be in legal custody, for he is accused of an offence against English law, and with the alleged violation of the law by the Executive of the foreign State our Courts could have nothing to do. The question is more serious when illegal action has been taken in the case of a person who is in fact subject to be extradited by regular process, and the time has passed by when the Courts could act effectively to restore his liberty. This question will be considered in connexion with a *dictum* of Brett, L.J., in *R. v. Weil*.

Cases of illegality
for which there
is no remedy.

R. v. Weil,
9 Q.B.D. 701.

To revert to this supposed duty to extradite which lies outside the law, it is difficult to see on what theory it could be rested. If there were a law common to all nations something perhaps might be said for it. But there is no international code of reference. To violate a girl of tender years is a shocking wrong; but the limit of age at which the consent of the girl may save the violator harmless varies in different countries. The fact that such differences exist in the way acts, admittedly wrongful, are treated, immediately raises the question which, as we shall see presently, is the stumbling block to scientific treatment of the subject, even when it is considered as being only within the domain of international agreement. If there is a duty to extradite, is the wrongfulness of the act in question to be judged by our law or by the law of the country where the offence took place? Again, murder is a crime all the world over; and yet the criminality of an offender may in one country be brought home to him by means which would not be tolerated in England, and so in England he would be held guiltless, and the crime not even "not proven."

Chap. I.
Sec. I.

There is no such thing as international criminal law, with the exception of piracy, or robbery on the high sea, of which all countries take cognizance; and pirates are called, but no other criminals, *hostes humani generis*.

Exceptions to
the locality
of crime.

36 & 37 Vict.
c. 88.

48 & 49 Vict.
c. 49.

43 & 44 Vict.
c. 35.

46 Vict. c. 3.

Extension of
the criminal
law beyond the
territory.

Subjects not
punished for
infringement of
foreign law.

Some acts committed outside the territory are, however, made offences by international compact, each country to the arrangement undertaking to pass the necessary legislation; such are, slave-trade offences, dealt with in England by the Slave Trade Act, 1873: and those not so well known, injuries to submarine telegraphs, by the Submarine Telegraph Act, 1885. Others again are dealt with by our Legislature as the result of a common understanding among the nations that they ought to be made criminal, and each take its share in repressing the acts in question: or one country may take the lead and the common understanding be dispensed with; such are, offences under the Wild Birds Protection Act, 1880, which is extended to places within the jurisdiction of the Admiralty: and under the Explosive Substances Act, 1883, which applies generally to British subjects beyond the dominions. These are essential exceptions to the rule that "all crime is local." And there is another exception which must be noted, for it holds a very definite position in the law of extradition. The criminal law is extended extra-territorially to subjects on the high seas, and, even beyond, to a more or less degree by all nations. In English law regard is had to the special nature of the offence, the extension of the jurisdiction to offences committed by subjects abroad being held justified only by the circumstances of a particular class of crime. But in some foreign systems regard seems more to be paid to the conduct of the national when he is in another country, and the whole of the criminal law is extended to subjects in respect of acts committed abroad. These extra-territorial laws form an obvious exception to the other maxim *locus regit actum*. The point has not, so far as I am aware, been decided; but there can be little doubt that the criminality of the act would be judged by the law of the country which makes the act criminal, and not by the law of the country where it was committed. No country punishes its subjects because they have infringed the laws of another country. § For example; it may be that in the case of

§ There is a unique provision in the treaty with Switzerland, which endeavours to get over the inconvenience resulting from the refusal of the Swiss Government to surrender nationals, by an evasion of this cardinal principle. It must lead to many anomalies, as will be seen in the Chapter on the Treaties, where it is considered.

homicide, the law which reduces it to manslaughter in England may differ from the law which raises it to murder in France; but if an Englishman were tried in England for a homicide committed in France it would be held to be murder or manslaughter according to English law, while if he were tried in France the question would be decided by French law, and the facts proved by French procedure. This question does not require elaboration; but the general principle must not be lost sight of, because it comes into that part of extradition which deals with acts which are made criminal by the laws of two countries, the Courts of both having concurrent jurisdiction. Further, it must be noted that the act may not even be criminal in the country where it is in fact committed, a possibility which arises in certain cases under the Criminal Law Amendment Act, 1885.

Chap. I.
Sec. I.

So far as English laws of this class are concerned, it is often said that murder is the only example. The Murders Abroad Act, 1817, is an instance of the law being extended to subjects abroad; but there are numerous others: bigamy, for example, by 24 & 25 Vict. c. 100, s. 57, and a series of acts made criminal by different statutes.

48 & 49 Vict.
c. 69.

57 Geo. III, c. 53.

It will be advisable now to refer to a few old cases in which the supposed duty to extradite has been considered.

SECTION II.

The duty to extradite considered.

The old cases in order of date are as follows.

R. v. Hutchinson [1678]. The prisoner was committed to Newgate on suspicion of murder in Portugal, under the Act of George III, above referred to. The only question was one of bail, which the Court refused because the offence was not triable by commission, under 35 Hen. VIII, c. 2, but by the Constable and Marshall.

R. v. Hutchinson.
3 Keble, 785.

R. v. Lundy [1690]. The Judges met by order of the King in Council to give their opinion concerning Colonel Lundy, who was Governor of Londonderry, and had endeavoured to betray it. Afterwards he escaped into Scotland, where he was taken and brought prisoner into England. The question was whether, admitting he was guilty of a capital crime by martial law com-

R. v. Lundy.
2 Vent. 314.

Chap. I.
Sec. 11.

mitted in Ireland, he might be sent from hence to be tried there, having regard to s. 11 of the Habeas Corpus Act, which enacts that no subject of this realm shall be sent over prisoner to any foreign parts. The Judges held that the case fell within the proviso of s. 15, "that if any subject of this realm has committed any capital crime in Scotland or other foreign parts of the King's dominions, he may be sent from hence to be tried in such foreign place." There was a reference to a case before Lord Hale, C.J., (before the Habeas Corpus Act), where one who had committed murder in Barbados and taken here, was sent over to be tried there.

R. v. Kimberley.
2 Str. 848.

R. v. Kimberley [1731]. The prisoner was brought up for feloniously marrying in Ireland one Bridget Reading, contrary to an Irish Act of Parliament. On a motion that he be discharged or bailed, it was contended that the justices in England are confined to act only as to such offences as are against the laws of England, and committed in England. But the Court said that it had been done in Colonel Lundy's case, and refused bail. It was added, however, that if application were not made to have him sent over in reasonable time, the motion might be renewed. Later, the matter was referred by the Secretary of State to the Attorney-General, who reported "that he might be taken from the Wood Street counter by a messenger, who should have a warrant to carry him to Ireland"; whither he was carried, tried, condemned, and executed.

E. I. Co. v. Campbell.
1 Ves. Sen. 246.

East India Co. v. Campbell [1749]. In this case the question arose on an information by the Attorney-General that the defendant should discover how he came into the possession of certain goods, whether it was not by fraud. The plea was that he could not be compelled to discover because it would subject him to a fine or corporal punishment, or if he shewed he gained them in the way of trade, he would be liable to penalties under the Company's statutes. The Court rejected the bill on the ground that the defendant was not obliged to discover a felony. For this felony, if committed, he was triable in Calcutta, where he might be sent, though he was not punishable here. It was, the Court thought, "like the case of one who was concerned in a rape in Ireland, and sent over there by the Government to be tried, although the Court of B.R., here refused to do it; which was founded on a case in *2 Ventris*; for the Government may send persons to answer for a crime wherever committed, that he may not involve his country; and to prevent reprisals."

Mure v. Kaye [1811]. The plaintiff had been arrested by a private person on suspicion that he had committed a forgery, whereupon he brought an action for false imprisonment. The plea set up suspicious circumstances: he had departed and left England and had gone to Scotland, and there continued. The defendants had gently laid their hands upon him and detained him in gaol in Scotland, in order that he might be conveyed by warrant to be issued by a justice of Middlesex to be dealt with according to law. It was held that the plea was too general; and further that the arrest with reference to the law of England was not well pleaded. Some of the Judges considered that justification of the arrest by the law of Scotland ought to have been pleaded: that is to say, that by the law of Scotland a person could be arrested for a crime committed in another country for the purpose of sending him to that country. Heath, J., said:—"It has generally been understood, that whenever a crime has been committed the criminal is punishable according to the *lex loci* of the country against the law of which the crime was committed; and by the comity of nations the country in which the criminal has been found, has aided the police of the country against which the crime was committed in bringing the criminal to punishment." It was also said, that "in Lord Loughborough's time the crew of a Dutch ship mastered the vessel and ran away with her, and brought her into Deal; and it was a question whether we could seize them and send them to Holland, and it was held we might. And the same has always been the law of all civilised countries."

Chap. I.
Sec. II.

Mure v. Kaye.
4 Taunt. 34.

Certain statements made in Parliament bearing on the question are sometimes referred to in the books; but the only thing with which we are concerned is, whether the Courts have ever countenanced the existence of a legal right in the Government to extradite persons for offences committed in another country: by which is meant an executive right which the Courts would not interfere with to set the person at large.

The cases themselves are not without interest, however, owing to the way in which the question has been raised; in two cases in the civil Courts, on a bill of discovery, and in an action for false imprisonment.

The old cases
summarised.

R. v. Hutchinson, is a mere question of English extra-territorial law, and has no bearing on the question. *R. v. Kimberley*, the *East India Company's case*, and the *Barbados case* on the facts, seem to contain the germs of the Fugitive Offenders Act; but

R. v. Hutchinson.
3 Keble, 785.
R. v. Kimberley.
2 Str. 848.

Chap. I.
Sec. 11.

the true germ is in s. 15 of the Habeas Corpus Act above referred to, but that was limited to capital offences. The question whether there is any common law right to send fugitive offenders from one part of the dominions of the same King to another involves points which might differentiate it from the case of extraditing to a foreign country. What these cases really decide, if they are to be taken as authoritative, is that this right existed in spite of s. 15 of the Habeas Corpus Act. And *Colonel Lundy's case*, if he had been guilty of an ordinary crime, would have been in the same category. But the question decided by the Judges was only that the Habeas Corpus Act did not stand in the way of the necessity for enforcing martial law in the place where the military offence was committed, if that happened to be within the dominions, and the prisoner had escaped into England. *Mure v. Kaye* decides no more than that a plea justifying an arrest on the ground of suspicious circumstances must not be general, but must shew the circumstances from which the Court may judge whether the suspicion was reasonable.

R. v. Lundy.
2 Vent. 314.

Mure v. Kaye.
4 Taunt. 34.

cf. Clarke on
"Extradition,"
Chap. I.

But undoubtedly there are *dicta* which shew that in the opinion of some Judges in days gone by there was a wider doctrine making it a legal duty in the State to extradite, though it might have been bottomed on the desire to prevent reprisals; but the only decision based on it is the one cited as having been tried before Lord Loughborough. But that was piracy, and was therefore triable in England. The arrest was therefore legal, and that is the only question which the Court is concerned with on *habeas corpus*. The Courts have no power to prevent a person being sent abroad, so long as the manual or physical detention of him for the purpose is not illegal. There however are the *dicta*, and they may be ranked with the theory of Grotius, that "the city where he abides either itself, being called upon, should punish the guilty man, or leave him to be dealt with by the party who makes the demand, *i.e.* give him up. All which passages are so to be understood, that the people or King are not strictly bound to give up the person, but to punish him." Other old writers are cited in favour of this theory, which in the last sentence of its statement is erroneous on the face of it. Lord Brougham put the case in a nutshell—"There ought to be laws on both sides giving power." And so far as any duty exists in the matter, if there is any at all, it is only to enter into treaties.

The question was discussed in America in *United States v. Rauscher*, in which the existence of the duty was expressly negatived in an elaborate judgment; and another important point—that the person surrendered can only be tried for the offence for which he has been surrendered—was based entirely upon this opinion, in spite of its great debateableness. This decision was approved in most cordial terms by Lord Coleridge, C.J., in *re Woodall*, and may therefore be taken as equivalent to an English decision.

Chap. I.
Sec. II.

U. S. v. Rauscher.
12 Davis [U.S.] 407.

re Woodall.
53 L.J. M.C. 157.

SECTION III.

The prerogative powers involved in Extradition.—

The Treaties and the Statutes.

The next point of constitutional interest is how the surrender of criminals can be effected. And here two principles which lie at the roots of the English constitution have to be borne in mind. First, the treaty-making power is the prerogative of the Sovereign; Parliament has nothing to do with it. Parliament cannot make a treaty, nor can it require the Sovereign to make one; and a treaty *per se* requires no ratification. Secondly, the law-making power is the prerogative of Parliament, that is, King, Lords and Commons. From these two principles it results that the Sovereign by himself cannot alter the law, nor command anything to be done in violation of the law. The right of the subject, or of any person within the ligeance of the law, to his personal liberty, cannot be invaded or trespassed upon by the King or by his order, nor by the Executive acting on the King's behalf, even though he bind himself by treaty with another Sovereign to do so. Therefore in order to carry out that violation of the common law which is involved in the surrender to foreign country of persons who have committed no offence against English law, both the Sovereign and the Parliament must be in agreement that it should be done. Thus it has come about that the machinery for extradition from this country is contained in two documents, of coordinate but independent authority, the treaty and the statute.

The powers of
King and
Parliament in
extradition.

But while it seems simple enough to state the fact, and explain the reason why treaty and statute must combine to make the surrender of criminals lawful, very practical difficulties arise in

The combination
of treaty and
statute.

Chap. I.
Sec. III.

working out the details. Even the form of the statute gives rise to questions not too easy to solve. In the early days when there were few treaties, special statutes were passed for "giving effect" to each of them. But treaties increasing in number, and the subject coming to be better understood, a general Act was passed in 1870, dealing generally with the law. But apart from this, it will be obvious to those who are familiar with such subjects, that the mere fact that the question had to be dealt with by two branches of the State must give rise, as in fact it has, to different points of view. This fact alone is sufficient to account for it: that one branch has worked on general, and the other on special lines; and this latter branch, moreover, has had to deal with the question at different times, when another element, the views of the foreign country with whom a treaty is being negotiated, has come into play. This in itself makes a separate treatment of the two points of view essential; for the possibility of a conflict must be admitted. Such a conflict is occasionally to be found; but it may be said at once that it has never assumed serious proportions.

Unilateral
extradition.

But treaties are not essential to extradition. So far as the States of Europe and the Americas are concerned, the policy of making reciprocity the basis of extradition has been adopted. The Commissioners advocated a broader treatment, that England should set an example to the rest of the world, and voluntarily surrender criminals who take refuge within her territories. The recommendation was acted on by Canada in 1889, where extradition had for some time past been dealt with by legislation independent of the English Act. Extradition without agreement is also provided for in a similar way by in the Straits Settlements, in a limited way in Hong Kong, and generally without limitation in Cyprus. There are also well-known cases of extradition in virtue of unilateral agreements; such as the arrangement with China to surrender Chinese subjects who escape to Hong Kong, under the Treaty of Tientsin. These special laws will form the subject of a separate chapter.

There is, however, another point of view, the purely theoretical. I have already pointed out that the subject does not lend itself very readily to theoretical treatment, other than the enunciation of the common law and the constitutional principles involved. But in 1877, a Commission was appointed to consider the working of the law; and I have thought it convenient to devote a short space to the recommendations of the Commissioners.

CHAPTER II.

The Report of the Royal Commissioners.

IT is unusual in a text-book to attach any great importance to the opinions expressed in the Report of a Royal Commission; for, after it has been presented to Parliament, its value can only be gauged by the effect given to it by subsequent legislation. If it is not adopted the arguments used furnish grounds for dissertations on the need for reform; have they obviously no legal weight. But in this case, the nature of the subject, and above all the names of the Commissioners, lend an additional importance to their remarks, which cannot fail to throw light on some of the difficult points connected with the subject of extradition; for the reasons for the law which has been adopted is not always quite clear. The Commissioners were—Sir Alexander Cockburn, then Lord Chief Justice of England, Lord Selborne, Mr. Russell Gurney, Sir Richard Baggallay, Sir Baliol Brett, Sir John Rose, Sir Fitzjames Stephen, Sir William Vernon Harcourt, Sir Alfred Thesiger, and Mr. McCullagh Torrens. The scope of the commission was to enquire into and consider the working and effect of the law and treaties relating to extradition. The Act had been in force since 1870, and had been amended in 1873. The report was signed in May, 1878; and while justifying much of the practice which was then in force, it contained many suggestions which have not been adopted. It seems probable, however, that some of them have had due weight given to them in treaties subsequently entered into. The following is a brief summary of the recommendations.

I.—The motives for extradition.

The Commissioners were of opinion that the extradition of fugitive criminals is founded on the following twofold motive:—

1.—That it is the common interest of mankind that offences against person and property, offences which militate against the general well-being of society, should

Chap. II.

be repressed by punishment, as the means of deterring others from committing, as well as of deterring the criminal from repeating the offence, as also of disabling the offender, either permanently or temporarily, from further crime.

2.—That it is to the interest of the State into whose territory the criminal has come that he shall not remain at large therein, inasmuch as from his past conduct it may reasonably be anticipated that, if opportunity offers, he will again be guilty of crime. No State can desire that its territory should become a place of refuge for the malefactors of other countries. It is obviously its interest to get rid of them.

On the first of these grounds we may reasonably claim from all civilised nations that they shall unite with us in a system which is for the common benefit of all; in other words that they shall concede to us reciprocity in the matter of extradition. But, looking to the second and narrower ground, it seems to us that, even if any State should fail to concede full reciprocity, there is no principle which should make this country unwilling to surrender, and so get rid of, the fugitive subjects of other States who have been guilty of crime, and whose surrender is asked for.

On this ground the recommendation was made that reciprocity should no longer be insisted on, but that statutory powers should be given to the proper authorities to deliver up fugitives whose surrender is requested by other States. This seems to imply that the enforced return of fugitives to their own country without a request in that behalf would not be regular by common law.

5 Edw. VII, c. 13. Expulsion orders have since been legalised by the Aliens Act, 1905.

II.—*The surrender of subjects.*

The Commissioners consider it to be obviously immaterial whether the fugitive be a subject of the State demanding his extradition or a subject of the country from which it is claimed; although a stipulation was at that time usual in treaties that subjects of the State applied to should not be surrendered, or at least that its Government might exercise a discretion in the matter.

In favour of such a provision [that subjects should not be surrendered] it is said that a man should not be withdrawn from his natural Judges; that the State owes to its subjects the protection of its laws, and that it fails in this duty if it hands over any of them to a foreign juris-

diction, and thus deprives them of the guarantees afforded by the law of their own country; that it is impossible to place entire confidence in the justice of a foreign State, especially with regard to the subjects of another country; and that it is a serious disadvantage to a man to be tried in a foreign language, and where he is separated from his friends and his resources, and from those who could bear witness to his previous life and character. It is therefore contended that there should be power to try in his own country a person charged with having committed a crime in another; and that he should be tried there, instead of being surrendered to the foreign State for trial.

The necessity which this would involve, a complete alteration of our whole system of criminal law and procedure was a sufficient answer to this suggestion. It would follow as of course that a foreigner charged with crime in England, but who had not escaped, should be sent to his own country for trial. But the laws of the two countries might be essentially different in respect of the quality and degree of the crime. For this and other reasons, the proposition was considered too extravagant to be entertained.

The offence is an offence against the law of the country in which it is alleged to have been committed. A person commorant in a foreign country owes obedience to its law in return for the protection which it affords him, as much as one of its proper subjects. Why, because he has escaped beyond the jurisdiction of that law, should an offender, whose surrender is asked for, be in a different position from that in which he would have been in the country from which he has escaped?

The suggestion that "the instances in which the surrender of an innocent person may be demanded will be exceedingly rare," is perhaps unduly sanguine; and the Commissioners seem to have lost sight of the fact that as extradition is not applied to all crimes, it is not a question whether innocent persons might be surrendered, but whether persons whose alleged offences do not come within the treaty, and who must therefore be treated as innocent, are likely to be surrendered; and that this must often be a question of construction of the words used in the treaty.

The suggestion of want of confidence in foreign tribunals was of course scouted; to have admitted it would lead to the system being abandoned altogether; for "extradition is based on mutual confidence in the administration of justice by the Courts of both nations," and any other suggestion would be an affront to

Chap. II.
 cf. Foreign
 Judgments,
 Pt. I, p. 355.

foreign nations: a principle which has often been enunciated by the civil Courts in connexion with enforcing foreign judgments. Convenience, both in regard to the administration of the law, and to the machinery of the trial in the matter of witnesses, was also in favour of the surrender of subjects. And last, but most important of all, if subjects were not surrendered there would be no trial at all, except in the special cases of extra-territorial laws already referred to, for the English law does not, and the English Courts could not, deal with crimes committed in other States. The Commissioners therefore recommended that in future treaties the surrender of subjects should be provided for. This recommendation has been adopted in some cases.

III.—*The offences which should be the subject of extradition.*

Extradition should embrace all those offences which it is the common interest of all nations to suppress; that is to say, offences against person and property, including in the latter category cases of fraud the purpose of which is to obtain property or money, offences against the bankrupt laws, forgery, and offences relating to coinage. To these it should be confined, to the exclusion of offences of a political or local character.

With regard to the exclusion of political offenders, the following argument was used:—

It is true that it is to the interest of every nation that by the submission of its subjects to the constituted government internal peace and order shall be maintained. But one nation can scarcely be said to have such an interest in the particular form of government, or in the particular ruling dynasty, of another, as that it should be called upon to make common cause with it against political offenders. And however odious the character of the rebel who disturbs the peace of his own country and gives rise to bloodshed and disorder from interested motives, or reckless disregard of the miseries attendant on civil discord, yet both from history and our own experience we know that there are exceptional instances in which resistance to usurpation or tyranny may be inspired by the noblest motives, and in which, though unsuccessful, it may escape condemnation and even command sympathy. It must always be difficult for a foreign nation, when political dissensions occur in another, to judge between the contending parties. Nay, such foreign nation itself may be divided in its views as to the merits or demerits of the particular cause. Influenced it may be by such considerations, the general sentiment of mankind is against the surrender of the

political exile to death or other grievous punishment. To have lost his country for which he has been risking life is no small loss to such a man, no light punishment for what he may have done, and he may be suffered to rest in peace in his place of refuge. The principle hitherto adopted in the matter of extradition of excluding offences of a political character should therefore be maintained.

But it becomes a very different thing when in furtherance of some political or pretended political purpose, some foul crime, such as assassination or incendiarism, is committed. Thus, attempts by conspirators to assassinate a reigning Sovereign,—regardless perhaps, that in doing so other lives may be sacrificed; or the setting fire to a prison, at the risk of burning all those within it, or the murder of the police, for the purpose of rescuing prisoners in custody for political offences, are crimes in respect of which—though the motive was a political one—we cannot think that any immunity should be afforded. Civil war and insurrection take place openly, in the face of day, and may, or may not, be justified or excused by circumstances; but assassination, or other forms of revolting crime lose none of their atrocity from their connexion with political motive.

Easy enough to state as a general and commendable principle, the working out in the concrete has proved very difficult, as we shall see when we come to the decided cases. So far as the recommendation is concerned, two points occur to me which shew that even these learned Commissioners failed to grasp all the bearings of the question. First, although it may be true to say that one nation may not have such an interest in the particular form of Government of another that it should be called upon to make common cause against political offenders, there is unfortunately a class of persons to whom it is often a matter of consuming interest; they will risk money and life in what they call the “cause of liberty,” a title which, for the world to accept it, must be justified by success. And even if subjects were universally surrendered, the exception in favour of political offences would still hold good with regard to them.

The result is, that our country may be made the basis of political operations to upset a foreign Government, and that our own subjects may combine, with or without the assistance of the subjects of the foreign State, to achieve this object, and the foreign Government have no remedy, at least so far as extradition is concerned. We are therefore compelled to adopt this theory, that States pay so little regard to even the most serious of

Chap. II. political questions affecting each other, that these consequences may be regarded with equanimity.

Secondly, the recommendation assumes the existence of tyranny, and the noblest motive for political offenders. Yet they are often actuated by basest motive, do not always resist usurpation or tyranny, except as they choose to deem it so; and are often more deserving of being stood against a wall to be shot than of sympathy. The Commissioners recognise that "foul crimes," such as assassination or incendiarism, are sometimes committed in furtherance of some political or pretended political purpose, and that for these no immunity should be afforded, because civil war and insurrection take place openly, and may or may not be justified or excused by circumstances; while "assassination or other forms of revolting crime lose none of their atrocity from their connexion with political motive." They therefore recommended that political motive should not be a legal, though it might be a discretionary ground for refusing the surrender of a person accused of an ordinary crime, unless it occurred during a time of civil war or open insurrection. It was perhaps inevitable that the glamour of the subject should somewhat tinge the argument, and "foul crimes" be taken as typical of the deeds which are done with a political motive, as it has been put, "in the sacred cause of freedom;" but most unromantic deeds, such as would in ordinary circumstances be deemed, say, robbery, may be committed with a similar purpose. With these the recommendation in fact deals; but it has not become substantive law, and it must be confessed that the real difficulties of interpretation are not much assisted by introducing the romance of rebellion into the argument. As we shall presently see, the same cause has impeded the Courts from coming to any very clear definition in interpreting the Act.

IV.—*Other offences which should be excluded.*

The Commissioners also proposed to exclude all offences against local laws and regulations, which would include "laws relating to military or naval service, laws relating to religion, laws relating to the duties of public officers, police regulations, and the like."

V.—*The quality and degree of extradition crimes.*

In considering what crimes, apart from those dealt with in III and IV, should be the subject of extradition, it was assumed that in the case of trivial offences neither the foreign Govern-

ment would ask for the offender to be surrendered, nor the offender himself escape. The Commissioners therefore recommended that extradition should be sanctioned in respect of all offences against either person or property which are indictable under our law, without reference to the degree of criminality involved in the particular charge. The selection of particular offences as alone of sufficient importance to warrant the surrender of criminals was condemned; but the enumeration of them recommended with a view to certainty and precision.

VI.—*Extradition confined to offences known to English law.*

We now come to the question which is the most difficult in the whole subject to deal with scientifically. The offence for which extradition may be asked must be an offence against the laws of the country where it was committed; but the test whether the request for surrender shall be granted is that it must also be a crime by English law. This is the principle on which the Act is based, and it is defended by the Commissioners.

If the question be asked whether we should refuse to give up a fugitive where the offence in respect of which the surrender is asked for, though an offence against the law of the country asking it, is not an offence against our own, the answer is involved in what has been already said. The crimes in respect of which nations should make common cause against criminals, and refuse them shelter, are those which it is the common interest of all to repress. There are offences against society in respect of person and property, which, in all countries, there will always be found persons disposed to commit, and which can only be kept under by the strong arm of the law. It is these offences which it should be the common purpose of all nations to endeavour to suppress by preventing those who have committed them from escaping from justice. But these offences are known to and dealt with by the law of all civilised nations, though they may be differently dealt with both as to procedure and punishment. If some offence, unknown to the law of other nations—to what may figuratively be called the common law of nations—should be created by the law of a particular people, such an offence would not come within the category of crimes which it is the purpose of extradition to repress.

If it is asked how it is to be ascertained that the offence charged is known and recognised as an offence, the answer is that our own law will afford a sufficient test, being abundantly comprehensive as to offences against person and property.

Chap. II.

Besides which, there is another reason for seeing that the charge in respect of which extradition is asked for is an offence under our own law. It is and always must be necessary that a *prima facie* case shall be made out before a magistrate in order to support the application for extradition. But the English magistrate cannot be expected to know or interpret the foreign law. It is not desirable that he should be required to do more than to see that the facts proved constitute *prima facie* an offence which would have been within judicial cognizance if done in this country.

At the same time, while holding that the facts charged against the party whose surrender is asked for should constitute an offence by our law, we by no means intend to say that the offence under the foreign law must be the same in point of denomination, or must fall within the same class or category, or be dealt with according to the same procedure, or be subject to the same punishment as it would be under our own. Any such requirement is calculated to create unnecessary difficulty, and may cause obstruction where extradition ought undoubtedly to take place. It being once ascertained that the facts proved constitute an offence coming within the principle of extradition, the particular form and character which the offence assumes must be left to the foreign law, this being the law which is alleged to have been broken, and by which beyond all question, if the accused is surrendered, his guilt or innocence must be determined. The magistrate, therefore, should be authorised to grant extradition upon sufficient proof before him of facts which constitute an extradition offence, although the description of the offence in the demand, or in the documents produced in support of it, or the facts as therein stated, may not be sufficient to constitute the particular offence to which that description is appropriated by British law; in other words, the magistrate should look to the facts proved before him rather than to the form in which the case may be presented on the documents.

Whether this is logical or not when it is compared with the motives on which extradition is said to be based is another matter. One thing, however, is quite certain, that the introduction of English law as the test whether extradition shall be granted, completely discards any idea of a duty to extradite at common law; for if such a duty existed, it could only recognise and act on the law which is actually broken, that is, the law of the foreign country. The introduction of English law as the test is unscientific, and could not have been adopted independently of convenience; and the recommendation of the Commissioners

frankly recognises the necessity for some rule of convenience. The reason which sees a difficulty in the magistrate having to interpret foreign law is not quite convincing, for English Judges are perpetually doing it; and after all, the only question which the magistrate would have to decide is whether certain facts proved before him constitute a strong or probable presumption of guilt, that is, bring the case within a given form of words in which the crime is defined by the foreign law. But whether the rule is scientific or not, the Extradition Act has been framed upon it, and the decisions have worked a principle out of the rule, which meets in every way the practical necessities of the question.

VII.—*Trial after surrender for other offences.*

The Commissioners objected to the provision that a person extradited should not be tried for any other offence until he has had an opportunity of returning to this country.

If there be another accusation against him in respect of a crime which would not properly be the subject of extradition, we see no reason why he should not be called upon to answer it. It may be discovered after the surrender that the party surrendered has committed some other offence deserving of punishment; or proofs, previously wanting, of such other offence may be brought to light. We see no reason why under such circumstances the offender should escape with impunity. If the circumstances under which he was given up were such as to call for his surrender, what possible interest—except in the case of the political offender, or the offender against a merely local law—can we have in what becomes of him afterwards? We should not be warranted in assuming that he will not be dealt with in the foreign country otherwise than according to justice and right. Again, what is it that we are supposed to be entitled to claim under such circumstances? It can only be that the party shall be set at large, or restored to this country, when, on the evidence which would be available on the second trial, his surrender might again be claimed from this or any other country bound by an extradition treaty, and if claimed, must be conceded.

They considered that it was obviously a serious objection to such a restriction that, if a person has been guilty of more than one extradition offence, either the foreign Government must bring to this country evidence of every crime which may be charged against the accused, the delay and expense of which would be very great, or the offender would escape

Chap. II.

in respect of all other crimes committed by him save the one on which he was surrendered. Moreover, it may well happen that the evidence of the one crime does not come out till the trial of the other.

With respect, this does not seem to be a very satisfactory way of dealing with a very thorny subject; and it must be noted again that, after as scientific examination of the question as it is capable of, the American Courts, in the case already alluded to, *United States v. Rauscher*, arrived at the opposite conclusion; what the report characterises as “disingenuous,” the decision calls “illegal.” But even looking at the question *a priori*, there are other reasons in favour of the rule which has been preserved in all the treaties.

U. S. v. Rauscher.
12 Davis [U.S.] 407.

The French
“*instruction*”
of the prisoner.

In France and some continental countries, there is a preliminary procedure known as the *instruction*, which is conducted by the *Juge d'Instruction*, and which includes the most searching cross-examination of the prisoner. It is something more even than “searching”; and in difficult cases the prisoner may be called on to account for the most trivial offences of his earliest years. On the result of this the case for the prosecution may be rested. It is clear, therefore, that the fact of getting hold of a man for some other offence might enable the foreign Court, by means of this procedure, to obtain evidence from the man himself as to the commission of a graver crime, which the *Procureur Général* could not have proved without it. It has always seemed to me that sufficient attention has not been paid to this foreign procedure and its vital difference from English practice. The question appears in more than one aspect of extradition, and in some cases it will be seen that its acceptance as a fact is inevitable. But here its existence has a material bearing on the question in issue; and it is certainly singular that this recommendation should contain no reference to it, because, from the dissent of Mr. Torrens on this point, the attention of the Commissioners would seem to have been called to it. They however, guard their recommendation by the proviso, in order specially to exclude political offences, that a prisoner surrendered on a particular charge should not be tried for any other offence unless of an extraditorial character. But “political and local offences” is not an exhaustive description of non-extradition crimes, and if it is a matter of no concern to this country what becomes of a person after he has been surrendered, the reason for the proviso is not apparent.

It was also suggested that the prisoner should have a right of enquiry as to whether, if he alleges it, he is likely to be tried for an offence not of an extraditional character.

Mr. Torrens' dissent was to the following effect; that "it is a matter of notoriety, not of argument, that the presumption of innocence, which we regard as fundamental, is not acknowledged in several of the greatest States of Europe; but on the contrary that the onus of disproof lies upon the accused; and that if he be not gifted by nature with coolness, self-possession, and a ready wit, or lucky in the possession of sufficient means to engage the services of an able advocate in meeting the imputations and insinuations of a *Procureur Impérial*, he has little chance of escape according to our notions of criminal justice." He considered that the recommendation, if acted on, "might be understood as an invitation to a foreign Government to deprive its subjects of the right of asylum in England, which, time out of mind, all our neighbours have enjoyed, irrespective of creed, race, or local institutions."

The Commissioners did not point out the practical difficulty of the rule, which has been retained in the Act, that the "opportunity of returning to His Majesty's dominions" may be an opportunity for escaping to some other country.

The rest of the recommendations are concerned with details connected with the subject: for example, that provision should be made for dealing with the case of a criminal, who, having been surrendered by one foreign State to another, may be brought into British territory on his way from the one country to the other. It is clear that the rigid rules which surround extradition necessitate a fresh application to the British Courts, for the man being on British soil uncharged with any offence, either under British laws or under the law of extradition, is entitled to go free. "The same thing might happen if a ship on which the prisoner had been embarked, being either a British ship or a foreign passenger ship, came in course of transit into our waters." The recommendation that statutory provision should be made to meet this case, has not been acted on; but some of the later treaties deal with the question of transit.

In view of a *dictum* of the late Lord Esher, when Lord Justice Brett, in *ex parte Weil*, in 1881, it is advisable to refer to the following important recommendation.

The Act provides for a more speedy form of extraditional arrest than is possible by the ordinary process of requisition to

Transit through
a third State.

ex p. *Weil*,
9 Q.B.D. 701.

Chap. II.

Arrest on
telegraphic
information.

the British Government. An application may be made to a Magistrate direct, who is authorised to issue a provisional warrant pending the arrival of the formal requisition. The practice authorises the police to act on telegrams received from the foreign police authorities. "In this way it becomes known that a foreign warrant has been issued for the apprehension of a person accused of an extradition crime, who either is already in this country, or is expected to come by a ship then on its voyage." "There is in such cases," the Commissioners say, "no reasonable doubt of the truth of the information thus sent by telegraph; but," they add, "as the law now stands, the magistrates and the police in this country cannot legally act until the foreign warrant and the evidence in support of it arrive here, and in the meantime the fugitive has the opportunity of escaping. To remedy this a power to arrest and detain persons under such circumstances seems to be required."

We would therefore suggest that power should be given to a police magistrate (having reasonable grounds for believing that a person is accused of an extradition crime, and that a requisition for his surrender is about to be made) by his warrant to authorise any constable to arrest such person, and bring him before the magistrate, who should then have power to remand him for a reasonable crime or discharge him, as to him might seem just. To meet the cases, said not to be uncommon, where even the short delay occasioned by applying to a magistrate may be important, power might be given to the Home Secretary to select in each police district some of the superior police to be authorised to act in such cases. And constables of this class might be authorised, on reasonable grounds of suspicion that a person was a fugitive guilty of an extradition crime, to arrest him without warrant, and bring him forthwith before a justice of the peace, who should have power, as to him might seem just, either to direct the prisoner to be brought at once before a police magistrate, or to remand him, or to discharge him. Such a power would be useful, and thus guarded, would not be likely to be abused.

The first part of the recommendation really approved of the provisional procedure by way of a magistrate's warrant, pending receipt of the requisition from the foreign Government, which was already sanctioned by the Act, and which is introduced in some, though not all, of the treaties. The last part of the recommendation has not been acted on; but it is precisely how the constable acted in the case above alluded to.

CHAPTER III.

The Statutory Surrender of Fugitive Criminals to Foreign Countries.

SECTION I.

The position of Parliament in Extradition.

THE EXTRADITION ACTS comprise the one passed in the year 1870, the principal Act, together with the amending Acts of 1873, 1895, and 1906. The Act of 1873 is specially important on account of the amendments it introduced into the schedule of extradition crimes. The Acts repealed are, 6 & 7 Vict. c. 75, for giving effect to the convention with France of 1843; 6 & 7 Vict. c. 76, for giving effect to art. X of the Treaty with the United States of America of 1842; 8 & 9 Vict. c. 120, for facilitating the execution of these two arrangements; 25 & 26 Vict. c. 70, for giving effect to the convention with Denmark of 1862; and 29 & 30 Vict. c. 121, "for the amendment of the law relating to treaties of extradition."

In considering the position which legislation holds in the subject of extradition, we must now go a little deeper into the constitutional question involved, in order to get a clear view of the relative positions of the Sovereign and of Parliament in relation to it. For the reasons already given extradition cannot exist in English law without the twofold authority of treaty and statute; but the province of each requires careful definition. The preamble of the Act of 1870 runs thus—

Whereas it is expedient to amend the law relating to the surrender to foreign States of persons accused or convicted of the commission of certain crimes within the jurisdiction of such States, and to the trial of criminals surrendered by foreign States to this country:—

Preamble of
Act of 1870
examined.

The first point to be noted is a curious one. After reading this preamble the impression left on the mind is that there was a general law relating to the surrender of fugitives from justice,

Chap. III.
Sec. I.

The law prior
to 1870.

which it was thought expedient to amend. But the only law, other than the common law, which existed in 1870, when the Act was passed, was contained in the three treaties, with France, the United States, and Denmark, together with their respective enabling Acts. Even the Act of 1866, although its title was general, only contained one section, which allowed foreign warrants of arrest and depositions taken abroad to be received in evidence. It was professedly passed to remove the difficulties which had been experienced in carrying into execution the then existing treaties; it was made general, and would therefore have been applicable to future treaties; but it is obvious that that one section would have been insufficient to give effect to any treaty which might thereafter be concluded. The Act of 1870 was a declaration of the law which was in future to govern the subject; the only amendment it effected was the repeal of the special Acts, and of the solitary provision of the Act of 1866, in order to bring the law applicable to the three treaties into line with the new procedure. The reason for passing a comprehensive Act is obvious. Other treaties with other countries were at that time in contemplation, each of which would require a special Act to give effect to it. As a matter of fact treaties were concluded with Germany and Brazil in 1872, with Italy, Sweden and Norway, and Austria, in 1873; those with other countries following gradually from year to year.

The Act of 1870.

But with the most cursory reading of the preamble of the Act of 1870, one cannot fail to be struck with the extreme care with which it is worded; the suggestion is inevitable that there are important reasons for this caution. More careful study of the language shews that we are in presence only of the law governing one part of the subject, not the whole; for extradition is divided into two branches: surrender *by* this country, and surrender *to* this country.

Now, as there is no other statute law referring to the subject, we arrive at the inevitable conclusion that the Act deals with all the parts of it which require the intervention of Parliament. Those parts are stated in the preamble—the law relating to the surrender of criminals to foreign States, and the law relating to the trial of criminals surrendered by foreign States to this country. And the preamble faithfully reflects the contents of the Act; for there is only one section, s. 19, which relates to criminals surrendered to this country, and that deals with one minor point, leaving the general question absolutely untouched.

To make the full significance of this point clear at once; it is not even doubtful whether the schedule of extradition crimes applies to the surrender of fugitives to this country. Clearly therefore, the position of Parliament requires most careful study, for its own declaration showed the nicest discrimination of language in dealing with it.

Chap. III.
Sec. I.

The Act of 1870 then is general; its predecessors, other than that of 1866, were special. But the form of these special Acts must also be considered.

Distinction
between the
special and the
general Acts.

The preamble of 6 & 7 Vict. c. 75, recites the terms of the treaty concluded with France on 13th February, 1843, by which an agreement was come to for the mutual surrender of persons charged with certain specified offences; but the title was "an Act for giving effect to a Convention between Her Majesty and the King of the French for the apprehension of certain Offenders."§ The preamble then continues: "And whereas it is expedient that provision should be made for carrying the said Convention into effect. . . ." The Act appears to be a ratifying, or an enabling, Act; but neither term is accurate, and I do not think that there is any generic term applicable to such legislation. The agreement was of course bilateral; but the statute "for carrying the said agreement into effect" is one-sided. The title itself refers only to "the apprehension of certain offenders"; and its provisions deal only with the surrender of fugitive criminals to France, leaving untouched the consequences of their surrender by France to England. So far therefore, although the early Acts are special, each referring to one treaty only, and the Act of 1870 is general, they have this in common, that they deal with one side of extradition only, the surrender by this country. The inference is that in the case of fugitives surrendered to this country the only point which requires legislation is the one dealt with in s. 19, in the Act of 1870, which provides that a criminal surrendered by a foreign State is not triable for a previous crime until he has been restored or had

Unilateral nature
of legislation.

§ The Act, 6 & 7 Vict. c. 76, follows the form of c. 75 exactly; reciting s. 10 of the treaty with the United States of America, generally known as the *Ashburton Treaty*, which was the extradition clause, and s. 11, which allowed s. 10 to be revoked by either Party signifying its wish to terminate it.

The Act, 25 & 26 Vict. c. 70, was drawn in a different form. The title was "an Act for giving effect to a Convention between Her Majesty and the King of Denmark for the mutual surrender of criminals," and the treaty was recited in the schedule. The general scheme of the Act did not, however, differ from that of its predecessors.

Chap. III.
Sec. I.

an opportunity of returning to the foreign State. The importance of this point had not been appreciated prior to 1870.

But there is another important difference between the old Acts and the new. Each of them adopted the crimes in respect of which the surrender was to be made from the particular treaty to which it related. But the Act of 1870 introduced the principle of limiting the crimes in respect of which criminals may be surrendered to those specified in the schedule, to which the name "extradition crimes" is given. Hence another important point about the preamble; on the one side it deals with "the law relating to the surrender to foreign States of persons accused or convicted of the commission of *certain crimes* within the jurisdiction of such States"; while in the case of surrender to this country "the trial of criminals" is referred to broadly, without any such limitation; and even the expression "accused or convicted" is omitted.

For these differences in treating the two sides of the subject there are very potent constitutional reasons. Rarely indeed has a preamble to a statute been drawn with such scrupulous exactitude, so that no word should be used which could throw any doubt on the exact position of the two prerogatives which must in combination deal with this question. We must therefore at once endeavour to appreciate what it is in the surrender of criminals by this country which requires the sanction of Parliament, and why the surrender of criminals to this country involves nothing which requires that sanction.

The point is of first importance, but it lies in a very small compass and can be stated quite shortly. In so far as the surrender of fugitive criminals by this country is concerned, the fact that it cannot be accomplished without an arrest, that is, without depriving the fugitive of his liberty, necessitates the authority of Parliament. If it were possible for the Sovereign to issue an effective order to a person to leave the kingdom the question might be different. But the power of expulsion, or of forbidding entry, even supposing it to be within the prerogative of the Sovereign, cannot be enforced without an interference with personal liberty, even though it require no more than the laying of a policeman's hand on the shoulder. Therefore the arrest which is essential to making the Sovereign's agreement to surrender effective requires statutory authority.

But much more than the arrest is involved. Mere arrest and surrender on requisition are obviously not contemplated, even in

How far
legislation
necessary to
extradition.

The arrest must
be legalized;

the early treaties; some enquiry is essential in order to ensure proof of the fact that the fugitive not only is a criminal, but also is the person he is alleged to be, and so to safeguard the liberty of the person arrested. Such an enquiry would naturally be entrusted to the magistracy; and therefore in this matter also, seeing that the offence charged is not an offence against the law of England, but against the law of a foreign State, the necessary jurisdiction to hold the enquiry must be derived from Parliament. Thus it follows that the whole procedure of surrender, from the arrest on to his final delivery over to some person to take him out of this country, must be created by statute.

Chap. III.
Sec. I.

and also the
necessary
action of the
magistracy.

But the Courts have by the common law the inherent right to protect liberty; they are therefore not specifically dealt with as part of the extradition machinery, and require no special legislation to warrant their interference. The application by the fugitive for a writ of *habeas corpus* will be dealt with hereafter.

But when we turn to the other aspect of the question, the surrender by a foreign State of a fugitive to this country, none of these considerations arise. It is, in the first place, for the foreign State to take such steps to carry out the arrangement as its own constitutional laws may require; but once the fugitive has been brought to this country the ordinary law of arrest applies to him; for he is accused of an offence against English law (or Scotch or Irish law, as the case may be); the right to his liberty no longer exists. He may be innocent; yet being charged he may be arrested, and must be tried according to law. There are therefore no authorities to whom jurisdiction must be given by Parliament, and no right to liberty which is infringed.

Legislation
unnecessary for
surrenders to
this country.

Therefore the early Acts were not strictly "enabling Acts" in the sense that they applied to the convention as a whole; but they enabled our part of the convention to be carried out. Neither were they "ratifying Acts." For, as has been before said, Parliament ought not, and in fact does not, concern itself with the exercise of the treaty-making prerogative of the Sovereign.

In these two points is to be found the reason for the scrupulous exactitude of the wording of the preamble of the Act of 1870; a reason which had already influenced the wording of the titles of the two Acts of 1843. The title of the Act of 1862 was not so accurately worded. §

Constitutional
nature of
preamble of 1870.

cf. p. 31, note.

§ I have insisted on this point at some length, because it is of first importance that the fundamental principles underlying the question should

Chap. III.
Sec. I.

The Act ignores
reciprocity.

The result of this enquiry is, that, putting the extreme case, there is nothing requiring the sanction of Parliament even should the King enter into a unilateral arrangement with France that that country shall surrender to the authorities in England fugitives from British law without restriction. Even what are called political offenders might be extradited to this country, and the Courts could not refuse to try them in so far as their offence came within the law. And, as I have already indicated, so unilateral is the statute that even the list of extradition crimes in the schedule does not apply to persons surrendered to England, except in so far as may result from s. 19. Reciprocity is the obvious and common basis of treaties, but it is not insisted on in the Act; and as is now clear, it would have been an infringement of the King's prerogative for it to have made any provision in that behalf. I am not sure that the point is altogether academic, and that a reference to it may help to solve a difficulty which will be considered later. It follows also however, that the one-sided agreements which have been made with oriental countries with which we have consular jurisdiction treaties, can be put into operation by the application of the Act to those countries by Order in Council. What has in fact been done in regard to them will form the subject of a special chapter.

Police action
outside their
own country.

One further point requires consideration. Parliament could, but would not, sanction arrest in this country by foreign police agents; and even were it to be done the question would arise, whether their own law would allow them to act. The utmost that is done, therefore, is to authorise the prisoner's surrender, after his committal, to the agent indicated by the foreign Government. This may be made clearer by considering the converse case, arrest by English police agents in a foreign country, supposing it to be authorised by the law of that country.

re Arton,
1890, 1 Q.B. at
p. 112.

be thoroughly understood, and because there are occasionally in the judgments statements which are hardly accurate. Even so great a lawyer as Lord Russell of Killowen said in *re Arton*,—"It is part of the comity of nations that one State should afford to another every assistance towards bringing persons guilty of such crimes [*i.e.* "crimes acknowledged to be such"] to justice. But in the application of this principle certain matters, such as the conditions upon which, and the class of crimes in respect of which, extradition is to be granted, and the formalities to be observed upon an application for extradition, are primarily matters for the two political Powers concerned to arrange in the first instance by treaty; having arranged them by treaty, the next step is by legislative enactment to give them the force of law, and to express in an Act of Parliament the conditions and limitations imposed upon the grant of extradition and the class of crimes to which extradition is to apply."

It is more than doubtful whether even this would render the arrest legal by English law. For an English official could not accept to act under a foreign law in a foreign country without express sanction of Parliament; his position and authority exist only in this country, in virtue of the Parliamentary authority for his appointment. The fact that the person arrested would be tried when he was brought here, in spite of the irregularity, does not affect the question. This actually occurred, and was discussed in *Sattler's case*, by Lord Campbell, C.J.

Chap. III.
Sec. I.

With regard to the limitation of extradition from this country to the crimes in the schedule of the Act of 1870, there is an apparent conflict between the two prerogatives, which did not arise in the case of early statutes. The practical aspect of the case is not difficult to understand. The great machine of the State moves smoothly, and the practice of the different Offices simplifies what often appears to be very complicated. But the fact that the details of the exercise of the Sovereign's prerogative are in the hands of the Sovereign's advisers, and that what we call the Constitution makes everything work easily, the interlocking of the parts being so neatly fitted, induces us sometimes to ignore the existence of the parts. But constitutional rules are not law, their sanction only an upheaval of the institutions of the country, if the case is sufficiently important. We must therefore describe the effect of the new departure introduced by the Act of 1870 in constitutional language. What Parliament did was to declare that it would not sanction the machinery provided by it for extradition in any other cases than those indicated in the schedule. But slips do sometimes occur; and, from what has already been said it follows that although offences may be included in treaties which are not contained in the schedule to the Act, extradition from this country cannot take place in respect of them. The question in practice would more often arise in connexion with construction rather than with any deliberate introduction of such an offence in the treaty. This did, however, occur in the Supplementary Convention of 1905 with the United States, which introduced bribery into the treaty list of offences; an oversight which was rectified by 6 Edw. VII, c. 15, which added bribery to the schedule of the Act of 1870. On the other hand, a person cannot be surrendered for an offence which comes within the schedule but is not included in the treaty with the country concerned. These constitutional principles have been established by the Courts in two cases, *R. v. Wilson*, and *re Counhaye*.

Sattler's case.
D. & B. C.C. at
p. 546.

The working
of the two
prerogatives.

R. v. Wilson.
3 Q.B.D. 42.
re Counhaye.
L.R. 8 Q.B. 410.

Chap. 111.
Sec. 1.

R. v. Wilson.
3 Q.B.D. 42.

In *R. v. Wilson*, an extraditable offence had been committed by a British subject in Switzerland; but by the treaty then existing it was provided that subjects should not be surrendered. The Court decided that the Act of 1870 is a general Act only, that is, it enables our part of any special treaty to be carried into effect; therefore, the terms of the treaty in question must be looked to, and so long as they are within the Act must be given effect to. Cockburn, C.J., said:—"The Order in Council [that is to say, the treaty as embodied in the Order in Council] must be co-extensive with, and limited by the treaty, for otherwise our municipal legislation† might be at variance with the terms which the two countries have arranged between themselves—a proposition absurd on the very face of it. I must therefore take it that the Order in Council has embodied the terms of the treaty, and that the Act of Parliament is only applicable so far as it can be applied consistently with the terms and conditions therein contained." The other Judges concurred; Mellor, J., pointing out that it was "a matter of positive bargain between the two countries"; and Field, J., that the Court was asked to disregard the arrangement between this country and the foreign State altogether, and to hold that the Act applies in its entirety, although the arrangement itself contains an exception and condition, which it manifestly could not do.

re Counhaye.
L.R. 8 Q.B. 410.

The earlier decision in *re Counhaye* is in effect based on the same principle; but it dealt specially with another question, which will be considered in connexion with the liability of accessories to be surrendered.

Scotland and
Ireland.

The position of Scotland and Ireland in the English law of extradition, requires a brief notice. London is the extraditing centre for the whole of the United Kingdom. It is unnecessary to find reasons for this other than it is convenient that the proceedings should take place at the seat of government. For the same reason English law has been made the test whether a person who has committed a crime abroad will be extradited from the United Kingdom; it would have unduly complicated the question to have introduced Scotch or Irish law. But offenders against the law of any part of the United Kingdom come within the treaty, and as the Act does not concern them, after their surrender to this country they may be sent to that part of the kingdom for trial which has jurisdiction over the

† "legislature" in the Report.

offence. When the fugitive has been arrested on British soil after his surrender by the foreign State, the law simply takes its course, subject only to the restriction contained in s. 19.

Chap. III.
Sec. 1.

I now pass to the provisions of the Act of 1870, which are very complicated. There are innumerable by-paths down which it is often necessary to turn; and I have often found it more convenient, as the Acts are printed in full in the Appendix, to paraphrase the sections in order to unravel the parts which interlock.

SECTION II.

The application of the Act by Order in Council.

Section 2.

The marginal note to this section expresses briefly its purport—

“Where an arrangement for the surrender of criminals has been made, an Order in Council is to apply the Act.”

Orders in Council are the constitutional method by which King-made law is notified to the people. By “King-made law,” I mean law made by the Sovereign, in virtue of some special power, which affects the rights of the individual, and which is enforced by the Courts. It is necessary to consider two special instances where law emanates directly from the Sovereign, in the form of Orders made by “The King’s most Excellent Majesty in Council.”

King-made law
by Order in
Council.

A treaty *per se* is not such a law, and therefore need not be made public by this means. It comes into force on the appointed day; it is usually laid before Parliament, but for its information only, and is published in the Gazette for the information of the public. But where the prerogative of the Sovereign works conjointly with the power of Parliament, as in the case of treaties which touch the rights of the individual and require legislation, and that legislation is general: or where the relations between this country or its subjects with foreign States or their subjects are affected by general legislation, Orders in Council are usually resorted to in order to put the law specifically into operation. Apart from constitutional questions, the practical advantage of this procedure is, that it affords a simple means of specialising

Chap. III.
Sec. 11.

general legislation by indicating the States to which, as well as the time from which, it applies.

1 & 2 Vict. c. 59.

The two classes of cases just given are quite distinct in principle. Of the second the procedure adopted in the old International Copyright Act of 1838 is typical. The Sovereign is authorised, when certain conditions have been fulfilled (in the instance, benefits to British authors corresponding to those granted by the Act to foreign authors), to make Orders in Council applying the provisions of the Act to any country, independently of any agreement made by the Sovereign in that behalf. But where arrangements have already been made, or are in contemplation of being made, with foreign States by the King, and where legislation is necessary to carry them out, Parliament authorises the issue of the necessary Orders in Council; but in this case the initiative is with the Sovereign, and the Act must not be read as authorising the Sovereign to enter into the arrangements.

Order in Council
authorised
for surrender to
any country.

This is the case in regard to extradition; and s. 2 provides that the Act may be applied by Order in Council to any foreign State with which an arrangement has been made "with respect to the surrender to such State of any fugitive criminals." The constitutional principle which governs the Act is again emphasised; the Order is necessary only to the surrender of fugitives from this country. It is not essential in so far as the treaty relates to the surrender of criminals by foreign States to this country; and if a unilateral treaty could be imagined by which a foreign Sovereign undertook to surrender fugitive criminals to this country, an Order in Council would be no more required than, as we have seen, an Act of Parliament. So, conversely to what is agreed to in some treaties, if in any treaty the foreign country consented to surrender subjects but England refused, the Act would have no bearing on persons so surrendered. The special provision, s. 19, which deals with the trial of criminals so surrendered, operates independently of the Order.

Limitation to
part of the
dominions.

The section provides that the operation of the Order may be limited, by the same or any subsequent Order, and restricted "to fugitive criminals who are in or suspected of being in the part of Her Majesty's dominions specified in the Order." This provision must be read with s. 17, which provides that the Act, when applied by Order in Council, is to extend to every British possession, unless it is otherwise provided by such Order. The restriction referred to in s. 2 means, therefore, that any part of

with whom the surrender rests. This seems to throw some light on the meaning of the provision in s. 5, which we have just considered, as to the conclusive nature of the Order in Council. The word "requisitions" in the sentence—"an Order in Council shall be conclusive evidence that the arrangement therein referred to complies with the requisitions of this Act"—is puzzling. If it means "requirements," then it might well be said that one of the requirements of the Act is that the treaty shall not agree to surrender fugitives for crimes which are not contained in the schedule. But it seems to be a misprint for "restrictions"; if this is so, the meaning of the provision becomes clearer:—the Order is to be conclusive evidence that the restrictions of the Act, [*i.e.* of s. 3], have been complied with. Why? because by s. 3, the Order is not to be made unless the arrangement is in conformity with these restrictions. Then the assumption that what has been done, [*i.e.* by the Privy Council], has been rightly done, and the provision that the validity of the Order *on this ground* shall not be questioned in *any legal proceedings* whatever, are intelligible. Otherwise a prisoner might contend on an application for a *habeas corpus*, that the whole treaty was bad because it did not contain one of the restrictions referred to in s. 3, although it was irrelevant to his own particular case. This is undoubtedly a possible construction of the provision; whether it is capable of a wider construction is a question which must wait till it arises in the Courts. Yet if the suggestion is sound, the enquiry by the Court in *re Bouvier*, and *re Woodall*, whether the restriction of s. 3 (2) [that provision is made by the law of the foreign country or by arrangement, that the fugitive shall not be tried for any other crime than the one for which he is surrendered] was complied with by the countries there in question, was not authorised by this provision of s. 5. This does not prevent the point being taken before the Secretary of State, that the treaty in question does not conform to the provisions of the Act, and in particular to the restrictions in s. 3.

Chap. III.
Sec. III.

Fulfilments of
"requisitions"
of Act.

Order conclusive
evidence of
compliance
with s. 3.

re Bouvier.
42 L.J. Q.B. 17.
exp. Woodhall.
57 L.J. M.C. 72.

The constitutional basis of the Act must once more be referred to. The surrender of criminals to this country is not dealt with by s. 3, which does not require the restrictions to be adopted reciprocally; it leaves this question to be settled by the Sovereign Authorities of the contracting States. For reasons which will be explained hereafter, the second restriction, that after surrender the trial of the fugitive must be limited to the offence for which

Restrictions of
s. 3 do not apply
to surrender to
England.

Chap. III.
Sec. III.

he was surrendered, is, by s. 19, applied to fugitives surrendered to this country.

In view of the great importance which has been attached to the non-surrender of fugitives accused of offences of a political character, it is somewhat remarkable that no provision was made protecting fugitive political offenders from being surrendered to this country.

Speaking generally, if there are reciprocal restrictions in the treaty, as is usually the case, the foreign State must look for the due fulfilment of these treaty obligations to the honesty of our officials; for any supposed disregard of them, the only redress is through the medium of its diplomatic representative, for it is not protected by the statute. It is in this respect that the decision in *R. v. Wilson* is of such importance; for it settles, if there were any doubt on the matter, that treaties made by the Sovereign are part of the law of the land, and, being duly notified, will be enforced by the Courts so long as they do not interfere with, or infringe the common law. It does seem possible, therefore, that if a fugitive were surrendered by a foreign State in contravention of one of the restrictions in the treaty, other than that embodied in s. 19, the Courts would protect him. But the point is undecided, and not free from doubt.

R. v. Wilson,
3 Q.B.D. 42.

Courts will
enforce the
treaties.

The two principal restrictions against surrender deal with offences of a political character, and with the limitation of the trial in the foreign State to the offence for which the prisoner is extradited.

Offences of a political character.

The first sub-section of s. 3 is as follows;—

First restriction
of s. 3.

A fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded is one of a political character, or if he prove to the satisfaction of the police magistrate or the Court before whom he is brought on *habeas corpus*, or to the Secretary of State, that the requisition for his surrender has in fact been made with a view to try or punish him for an offence of a political character.

The other provisions of the Act relating to this class of offences are the following.

Under the 2nd paragraph of s. 7, the Secretary of State, on receipt of a requisition for the surrender of a fugitive, may

I have some difficulty in giving a satisfactory explanation of this section, which is more far-reaching than is usually the case in similar provisions. By the Documentary Evidence Act, 1868, s. 2, *prima facie* evidence of, *inter alia*, Orders in Council, may be given in all legal proceedings, by, among other ways, production of a copy of the London Gazette. This proves the fact that the Order has been issued, and is of course to all intents and purposes complete proof. Now, taking up the thread of the previous argument, the meaning of the provision that the validity of the Order shall not be questioned, would in one case be fairly clear. If the Order "embodied" the treaty, and contained no special provisions in itself, as is in fact the practice, § this section would mean that the validity of the Order, apart from the embodied treaty, could not be questioned; but it would leave open the possibility of raising the question that the treaty goes beyond the Act. But this would not apply where the treaty is "recited," or paraphrased, in the Order, because its terms become those of the Order and cease to be the express language of the treaty. Again, as it is the intention of the Act that the Order should be the vehicle by which the treaty is promulgated, a provision that it should be conclusive evidence of the contents of the treaty would be intelligible, and this whether the treaty were "recited" or "embodied." The further provision that the Order is to be conclusive evidence that the Act applies in the case of the foreign State mentioned in it, is of a similar nature. But the section goes on to provide that the Order is to be conclusive evidence that the treaty "complies with the requisitions of this Act." This appears to mean that when the Order is issued it is to be understood that the Privy Council is satisfied that the treaty complies with the requisitions of the Act, and this is to be taken as conclusive evidence that it does, and no question as to the validity of the Order—that is, as to the validity of the treaty which is part of the Order—can be raised. Whether this was the meaning of the drafters of the Act is not certain. I doubt whether it can be so; because the provision would be wide enough to cover the case of a treaty in which a crime is included which is not in the schedule of the Act, and the commonly received idea that this may be raised, would be unsound. It seems probable that something may turn on the use of the word

Chap. III.
Sec. II.

37 & 32 Vict.
c. 37.

Provision that
"validity of
Order not to
be questioned"
examined.

§ Except the clause excluding Canada from the operation of Act, which appears in all the treaties; this is practically the only substantive provision in the Orders.

Chap. III.
Sec. II.

“requisitions;” but a definite suggestion cannot be made until we have considered s. 3.

By s. 21, the original Order may be revoked or altered, and the provisions of the Act with respect to the original Order are to apply *mutatis mutandis* to the new Order.

Application of the Act.

Channel Islands
and Isle of Man.

By s. 22, the Act is to extend to the Channel Islands (except so far as relates to the execution of warrants) and the Isle of Man, in the same manner as if they were part of the United Kingdom; and the Royal Courts of the Channel Islands are required to register it.

Colonies.

The application of the Act to the colonies is specially dealt with by ss. 17 and 18, which will be considered separately.

Indian treaties.

By s. 23, a saving is provided for Indian treaties.

Nothing in this Act shall affect the lawful powers of Her Majesty or of the Governor General of India in Council to make treaties for the extradition of criminals with Indian Native States, or with other Asiatic States conterminous with British India, or to carry into execution the provisions of any such treaties made either before or after the passing of this Act.

India.

Apart from this provision, India is for the purposes of the Act a British possession, and the law governing extradition to and from the colonies applies to it.

SECTION III.

The restrictions on Extradition.—Political Offences.

Section 3.

This section contains the restrictions which are to be observed “with respect to the surrender of fugitive criminals.”

The restrictions.

Colloquially, these restrictions may be said to be the fundamental statutory principles of extradition; speaking more strictly, they are the conditions which must be observed if the arrangement to surrender criminals to any foreign State is to be given effect to.

Each of the four clauses of s. 3, contains a direction that “a fugitive criminal shall not be surrendered” unless the condition is fulfilled, which is clearly addressed to the executive authorities

with whom the surrender rests. This seems to throw some light on the meaning of the provision in s. 5, which we have just considered, as to the conclusive nature of the Order in Council. The word "requisitions" in the sentence—"an Order in Council shall be conclusive evidence that the arrangement therein referred to complies with the requisitions of this Act"—is puzzling. If it means "requirements," then it might well be said that one of the requirements of the Act is that the treaty shall not agree to surrender fugitives for crimes which are not contained in the schedule. But it seems to be a misprint for "restrictions"; if it is, the meaning of the provision becomes clearer:—the Order is to be conclusive evidence that the restrictions of the Act, [*i.e.* of s. 3], have been complied with. Why? because by s. 4, the Order is not to be made unless the arrangement is in conformity with these restrictions. Then the assumption that what has been done, [*i.e.* by the Privy Council], has been rightly done, and the provision that the validity of the Order *on this ground* shall not be questioned in *any legal proceedings* whatever, are intelligible. Otherwise a prisoner might contend on an application for a *habeas corpus*, that the whole treaty was bad because it did not contain one of the restrictions referred to in s. 3, although it was irrelevant to his own particular case. This is undoubtedly a possible construction of the provision; whether it is capable of a wider construction is a question which must wait till it arises in the Courts. Yet if the suggestion is sound, the enquiry by the Court in *re Bowvier*, and *re Woodall*, whether the restriction of s. 3 (2) [that provision is made by the law of the foreign country or by arrangement, that the fugitive shall not be tried for any other crime than the one for which he is surrendered] was complied with by the countries there in question, was not authorised by this provision of s. 5. This does not prevent the point being taken before the Secretary of State, that the treaty in question does not conform to the provisions of the Act, and in particular to the restrictions in s. 3.

Chap. III.
Sec. III.

Fulfilments of
"requisitions"
of Act.

Order conclusive
evidence of
compliance
with s. 3.

re Bowvier,
42 L.J. Q.B. 17
re Woodall,
57 L.J. M.C. 72.

The constitutional question basis of the Act must once more be referred to. The surrender of criminals to this country is not dealt with by s. 3, which does not require the restrictions to be adopted reciprocally; it leaves this question to be settled by the Sovereign Authorities of the contracting States. For reasons which will be explained hereafter, the second restriction, that after surrender the trial of the fugitive must be limited to the

Restrictions of
s. 3 do not apply
to surrender to
England.

Chap. III.
Sec. III.

offence for which he was surrendered, is by s. 19, applied to fugitives surrendered to this country.

In view of the great importance which has been attached to the non-surrender of fugitives accused of offences of a political character, it is somewhat remarkable that no provision was made protecting fugitive political offenders from being surrendered to this country.

Speaking generally, if there are reciprocal restrictions in the treaty, as is usually the case, the foreign State must look to the due fulfilment of these treaty obligations to the honesty of our officials; for any supposed disregard of them, the only redress is through the medium of its diplomatic representative, for it is not protected by the statute. It is in this respect that the decision in *R. v. Wilson* is of such importance; for it settles, if there were any doubt on the matter, that treaties made by the Sovereign are part of the law of the land, and, being duly notified, will be enforced by the Courts so long as they do not interfere with, or infringe the common law. It does seem possible, therefore, that if a fugitive were surrendered by a foreign State in contravention of one of the restrictions in the treaty, other than that embodied in s. 19, the Courts would protect him. But the point is undecided, and not free from doubt.

R. v. Wilson,
3 Q.B.D. 42.

Courts will
enforce the
treaties.

The two principal restrictions against surrender deal with offences of a political character, and with the limitation of the trial in the foreign State to the offence for which the prisoner is extradited.

Offences of a Political Character.

The first sub-section of s. 3 is as follows;—

First restriction
of s. 3.

A fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded is one of a political character, or if he prove to the satisfaction of the police magistrate or the Court before whom he is brought on *habeas corpus*, or to the Secretary of State, that the requisition for his surrender has in fact been made with a view to try or punish him for an offence of a political nature.

The other provisions of the Act relating to this class of offences are the following.

Under the 2nd paragraph of s. 7, the Secretary of State, on receipt of a requisition for the surrender of a fugitive, may

send an order to the magistrate to issue a warrant for his apprehension. But, if he

Chap. III.
Sec. III.

is of opinion that the offence is one of a political character, he may, if he think fit, refuse to send any such order, and may also at any time order a fugitive criminal accused of such an offence to be discharged from custody.

Provisions of
Act as to
offences of a
political
character.

By s. 9, when the hearing comes on,—

the police magistrate shall receive any evidence which may be tendered to show that the crime of which the prisoner is accused or alleged to have been convicted is an offence of a political character.

Further, in s. 24 of the Act of 1870, and s. 5 of the Act of 1873, which allow evidence to be taken in England when it is required by foreign criminal proceedings, criminal matters of a political character are excepted.

On these provisions several questions arise of considerable difficulty. This suggests itself at first reading: that the familiar expression "political offence" is not used, but "offences of a political character." Next, that there is manifest throughout all these provisions a fixed determination to exclude these offences from extradition, for there is a clause protective of the fugitive on every occasion when the question could possibly be raised. So far as the Secretary of State is concerned, he may on his own motion at once refuse to act on receipt of the requisition; and it is clear that s. 7 applies where the requisition is received after the summary procedure, by way of magistrate's warrant, has been made use of. Further, the words of s. 3 (1) are so wide that the fugitive may prove what the last part of it allows him to prove, at any time before his surrender has actually taken place. This latitude in point of time is specially referred to by Lord Russell, C.J., in *re Galwey*.

re Galwey,
1896, 1 Q.B. 230.

Again, he may prove what the last part of the sub-section allows him to prove, to the satisfaction of the Court before whom he is brought on *habeas corpus*, and also to the satisfaction of the police magistrate; and the magistrate may, under s. 9, receive evidence to show that the crime in respect of which the surrender is demanded is of a political character. And finally, in a matter which lies altogether outside extradition proceedings, the collection of evidence for foreign Courts in criminal matters, it is to be refused in this class of cases.

I have been compelled to use the cumbrous phrase "he may prove what the last part of the sub-section allows him to prove,"

Chap. III.
Sec. III.

The two points
dealt with in
s. 3(1).

in consequence of the third point which arises on the face of s. 3 (1). The sub-section deals with two distinct things, and it deals with them in two distinct ways. There is first, the general direction that the fugitive shall not be surrendered if the offence "is one of a political character;" secondly, the fugitive is allowed to prove something in regard to the offence before all the authorities, executive and judicial, before whom the question of his surrender comes; this is, that the requisition "has in fact been made with a view to try or punish him for an offence of a political character." The difference in treatment of the two points is very noticeable, and the difficulty is to discover the reason for this difference.

I shall first attempt to unravel s. 3 (1), without the aid of the authorities. By the ordinary rules, this provision must be construed by the light only of what precedes it. Now, as s. 3 contains general directions, in the form of restrictions, on the surrender of fugitive criminals, it follows that the first part of sub-sec. (1) must be obeyed by all authorities who take an active part in the surrender. These authorities are the Secretary of State, in virtue of the powers with which he is vested by the Act, and the Court, in the exercise of its powers under the common law. The magistrate does not come in at this point, because the Act only treats him as part of the machinery, and he has no powers other than those which the Act gives him, which will be considered presently.

Reasons why
"political
offences" not
dealt with.

We may now go one step further. One reason for dealing, not with political offences, but with "offences of a political character" is fairly clear. "Political offences" is a generic and colloquial term. It may be applied in some countries to acts which lie altogether outside the criminal law; acts which may lead to banishment without trial, and with which extradition has nothing to do. The expression "right of asylum" may be legitimately used in regard to those who commit them. But there are crimes which are political in their character: high treason in some of its aspects, sedition, and the like. These have not been included in the schedule to the Act; hence one clear reason why the wider phrase "offences of a political character" has been used. With regard to one form of high treason, compassing or imagining the death of the King, it is, in some cases, also an offence against the ordinary law; shooting at the King is also an attempt at murder; and therefore extradition might in normal circumstances be demanded for the offence on this ground. Yet shooting at, or

murder of the Sovereign, might in some circumstances be political in its motive; and, therefore, the accepted policy of the law of extradition being what it is, it was necessary that the exception should be drawn broadly; and "offences of a political character" include not only such offences as are in their elements political, but also ordinary crimes which are committed with political intention. The policy is completed by excluding from the schedule crimes to which the law gives a name in itself implying a political motive. What amounts to a political intention will be presently considered. It seems probable, however, that a non-political attempt on the life of the Sovereign would be extraditable, if the charge was attempt at murder, and not high treason. There is a unique provision in the list of crimes in the treaty with the Netherlands, which expressly refers to this:—

Chap. III.
Sec. 111.

1. Murder, including infanticide, or attempt or conspiracy to murder, including such crimes when directed against the Sovereign, his heir, or any person whomsoever, provided that the crime is not of a political character.

Non-political attempts on life of the Sovereign.

cf. Appendix, p 156.

Coming now to the second part of the sub-section, we have to determine what is the meaning of words "in fact with a view," in the sentence "if he prove . . . that the requisition for his surrender has in fact been made with a view to try or punish him for an offence of a political character." There are two ways of reading the sentence; the first, which is the more commonly accepted, is that it allows the fugitive to prove that although his surrender has been demanded in respect of one crime, yet the intention of the foreign Government when it gets him is to try or punish him for an offence of a political character. There is in this interpretation a suggestion of an ulterior object in the mind of the foreign Government, which can only be described as going behind the treaty. The second reading is a simpler one; that the words are words of reference merely to what has gone before, and have no special emphasis or legislative intent other than this, to make it clear that the fugitive has a right to prove that the offence for which his surrender is demanded, though within the treaty list, is in fact of a political character. In other words, that the sub-section taken as a whole means simply this—that persons are not to be surrendered for offences of a political character, and that the fugitive may prove that the offence with which he is charged is in fact of a political character, or was committed with a political motive, and that his surrender has been demanded with a view to try or punish him for it.

Meaning of "in fact with a view" to punish for offence of a political character.

cf. *post*, p. 173.

Chap. III.
Sec. III.

The reasons which may be advanced in favour of this view are these:—

Reasons for
simple
construction
of provision.

(i) It is a natural method of drafting, first to state the general principle of non-surrender, then to enact that persons may prove that the principle would be violated if they were surrendered; more especially as there are three separate authorities before which the question may be raised.

(ii) There is a class of crimes which are in fact extraditable, but which may be, and often are, committed with a political intent, and so may become offences of a political character. The provision is a natural one; for otherwise the surrender might be granted as of right, and no means clearly given for allowing proof that, in the circumstances, the case comes within the restriction.

(iii) The 2nd sub-section of s. 3, which immediately follows this provision, expressly provides that a fugitive surrendered for one offence shall not be tried for another unless a certain condition is fulfilled.

(iv) The suggestion that the 1st sub-section allows a fugitive to prove that, although his surrender has been demanded for one offence, the foreign Government has the ulterior object of trying or punishing him for another of a political character, amounts only to a special provision in the case of these offences, which is actually covered by the general provision of the 2nd sub-section. §

(v) Assuming, as we must assume, that the treaty has been made in accordance with the provisions of s. 3, it follows that this suggestion amounts to this, that the fugitive is allowed to prove that the foreign Government is endeavouring to go behind the treaty, and therefore is not acting in good faith.

On the other hand, it must be noted that it has not been made a condition that the fugitive should have the right to prove a contemplated infringement of sub-sec.(2): as for example, that his surrender for theft has in fact been asked for with a view to try or punish him for murder. Yet, if the foreign Government

§ In the treaties the two sub-sections usually figure as separate articles. In the treaty with the United States, however, the question is treated differently. Not only are the usual articles inserted corresponding with the sub-sections of the Act, but there is the following additional provision;—

No person surrendered by either of the High Contracting Parties to the other shall be triable or tried, or be punished for any political crime or offence, or for any act connected therewith, committed prior to his extradition.

were to institute a prosecution for an offence other than the one for which a prisoner has been surrendered, it would be a breach of faith, for which there is no redress except diplomatic representation, which will hardly benefit the person surrendered. What has been said with regard to the report of the Commissioners on this point must be borne in mind, as also their suggestion that the fugitive should be given a chance of proving this; for, as I have pointed out, the case might well occur of a person surrendered for theft, and materials for murder be obtained on his examination by the foreign Court.

Chap. III.
Sec. III.

cf. p. 21.

One reason for this difference in treatment may possibly be found in the strenuous and apparently universal objection to surrendering political fugitives. But the restriction against trying the surrendered fugitive for any other offence than the one for which he has been extradited, has also been very strenuously insisted on; and it must be confessed that the omission to give the fugitive the right to prove the ulterior object of the requisition in this case, lends force to the contention that it was not intended to give him this right in the case of political offences: for the objection to allowing a fugitive to suggest an ulterior object in the action of the foreign Government rests on its own demerits, and not on any particular application of it.

Perhaps, however, the key to the true construction of sub-sec. (1), may be found in the use of the words "try or punish"; and here again the words are capable of both a simple and a complicated construction. The whole Act is drafted on the double basis of fugitives accused or convicted; and therefore both "try" and "punish" would naturally be used in this sub-section: to try him if he is accused: to punish him if he has been convicted. But political offenders are sometimes banished by administrative order; and the words are wide enough to cover such a case as this: a man whose surrender is demanded for theft whom the Government, when they get him, intend to banish for a political offence.

Meaning of "try or punish."

The decision in *re Arton*, however, must be taken as authoritative that the suggested simple construction, and elimination of the proof of ulterior object altogether, is not the right one; but I have thought it advisable to go into the question thus elaborately, not only because the possibility of another interpretation has never been suggested in England, but also because the judgments in *re Arton* require the nicest discrimination in determining what was in fact decided as to the manner in which the question of

re Arton,
1906, 1 Q.B. 108.

Chap. III.
Sec. III.

ulterior object may be raised. It is well to note that, as we shall presently see, the facts alleged by the prisoner in that case did not really bring him within either construction; there was no more than an extravagant suggestion which it was impossible for the Court to act on. Further, the complex construction is wide enough to include the simple one.

“Right of
asylum”
exists of
political refugees.

One possible consequence of this view must not be overlooked. It gives a great actuality to the “right of asylum” in the case of political refugees. For if a political offender subsequently commits, say, an assault totally unconnected with his political activities, might he not always escape surrender by shewing that he would be tried or punished for his political offence when he is surrendered? The answer, almost complete, is, that a mere allegation that he might be so tried is insufficient; the sub-section throws on him the burden of proving that it is the intention of the foreign Government so to try him.

re Wong Ka Chong,
H.K.L.R.I. pp. 14,
21.

It may be remarked that the question is of great importance in the East; and the suggestion above made was thrown out in a case which occurred in Hong Kong; but the Attorney-General did not feel justified in arguing it, in view of the decision in *re Arton*.

re re Arton,
1896, 1 Q.B. 108.

Meaning of
“offences of a
political
character.”

re Castioni,
1891, 1 Q.B. 149.

I now come to the decisions explaining the meaning of the expression “offences of a political character.”

In *re Castioni*, the facts were these.

The prisoner was charged with the murder of Luigi Rossi, by shooting him with a revolver on September 11th, 1890. Rossi was a member of the State Council of the Canton of Ticino in Switzerland; Castioni was a citizen of the Canton; he had resided in England for 17 years, and had returned on September 10th. For some time previous to this date much dissatisfaction had been expressed by a large number of the inhabitants of Ticino, at the mode in which the political party then in power were conducting the government of the Canton. A request was presented to the Government for a revision of the constitution, in accordance with the terms of the constitution, which provided that if the request were made by 7000 citizens, the Council should within one month submit the question of revision to the people. The Government declined to take a popular vote, and on September 11th, a number of citizens, among whom was Castioni, seized the arsenal of the town of Bellinzona, from which they took rifles and ammunition, disarmed the gendarmes, arrested and handcuffed several persons connected with the

Government, and forced them to march in front of the armed crowd to the municipal palace. Admission was demanded in the name of the people, and was refused by Rossi and another member of the Government who were in the palace. The crowd then broke open the outer gate and rushed in, pushing before them their prisoners. Castioni, armed with a revolver, was among the first to enter. A second door which was locked was broken open, and Rossi, who was in the passage, was shot by Castioni. The crowd then occupied the palace, and imprisoned several members of the Government. A provisional Government was appointed, which remained in power until it was dispossessed by the armed intervention of the Federal Government. There was no evidence that Castioni had any previous knowledge of Rossi.

Chap. III.
Sec. III.

re Castioni.
1891, 1 Q.B. 149.

It was contended that this was an offence of a political character; the definition of that class of offences suggested by John Stuart Mill in the House of Commons, in 1866, being relied on:—"Any offence committed in the course of or furthering of civil war, insurrection, or political commotion." Denman, J., said;—

"I do not think it is necessary or desirable that we should attempt to put into language in the shape of an exhaustive definition exactly the whole state of things, or every state of things which might bring a particular case within the description of an offence of a political character. I wish, however, to express an opinion as to one matter upon which I entertain a very strong opinion. That is, that if the description given by Mr. John Stuart Mill were to be construed in the sense that it really means any act which takes place in the course of a political rising without reference to the object and intention of it, and other circumstances connected with it, I should say that it was a wrong definition, and one which could not be legally applied to the words used in the Act of Parliament."

The reference to a speech in the House was of course unusual; but Sir Charles Russell, who appeared for the prisoner, was careful to say that he referred to it only for the purpose of illustration. The difficulty of adopting Mill's suggested definition arose from his use of the alternative, "in the course of" and "or in furtherance of," and the suggestion was made that the two terms were equivalent. Denman, J., said that he did not think that was the intention of the speaker; but that if they were not to be construed as merely equivalent expressions, it would be a wrong definition. He continued,—

"I think that in order to bring the case within the words of the Act and to exclude extradition for such an act as murder,

Chap. III.
Sec. III.

re Castioni.
1891, 1 Q.B. 149.

which is one of the extradition offences, it must at least be shewn that the act is done in furtherance of, done with the intention of assistance, as a sort of overt act in the course of acting in a political matter, a political rising, or a dispute between two parties in the State as to which is to have the government in its hands, before it can be brought within the meaning of the words used in the Act."

Dealing with the facts the learned Judge considered that there was at the time existing in Ticino a state of things which would certainly shew that there was more than a mere small rising of a few people against the law of the State: that there was something of a very serious character going on—amounting in that small community to a state of war: there were multitudes of men armed with arms from the arsenal, going to attack the seat of government. Further, it appeared from a document, which was however only used for the purpose of drawing a conclusion from it, and not for the facts it contained, that the Government of the country themselves looked upon this as a serious rising, and a serious state of violence by a very large body of the people against the Government.

In deciding the question whether the act done was done in the course of a political rising, Denman, J., continued,—

"We cannot decide that question merely by considering whether the act done at the moment at which it was done was a wise act in the sense of being an act which the man who did it would have been wise in doing with the view of promoting the cause in which he was engaged. I do not think that it would be at all consistent with the real meaning of the words of the statute if we were to attempt so to limit it . . . to limit it in the way suggested by the cross-examination of Bruni [one of the witnesses, namely], by considering whether it was necessary at that time that the act should be done."

This witness had said,—“The death of Rossi was a misfortune, and not necessary to the rising.”

“The question really is, whether, upon the facts, it is clear that the man was acting as one of a number of persons engaged in acts of violence of a political character with a political object, and as part of the political movement and rising in which he was taking part.”

Reviewing the evidence, the learned Judge considered that at the moment at which Castioni fired the reasonable presumption was that he, then knowing nothing about Rossi, having no spite or ill-will against him, fired that shot thinking it would advance, and that it was an act which was in furtherance of, and done intending it to be in furtherance of, the very object which the

rising had taken place in order to promote, and to get rid of the Government, who he might until he had absolutely got into the palace, have supposed were resisting the entrance of the people. Castioni was an active party to the unlawful rising, a person who had been doing active work from a very much earlier period, and in which he was still actively engaged; the writ ought therefore to issue, because "we should be acting contrary to the spirit of this enactment, and to the fair meaning of it, if we were to allow him to be detained in custody longer."

Chap. III.
Sec. III.

re Custiont.
1891, 1 Q.B. 149.

The other Judges concurred. Hawkins, J., said,—

"I entirely dissent, and I think all reasonable persons would dissent, from the proposition that any act done in the course of a political rising, or in the course of any insurrection, is necessarily of a political character. Everybody would agree with this—that it is not everything done during the period during which a political rising exists that could be said to be of a political character. A man might be joining in an insurrection, joining in a rising, joining in that which in itself is a pure political matter, but notwithstanding that he were engaged in a political rising, if he were deliberately, for a matter of private revenge or for the purpose of doing injury to another, to shoot an unoffending man, because he happened himself to be one of an insurgent crowd, and had a revolver in his hand, no reasonable man would question that he was guilty of the crime of murder, because that offence so committed by him could not be said to have any relation at all to a political crime, namely, a crime which in law ought to be punished with the punishment awarded for such a crime."

The learned Judge then said he had found no better definition of the meaning of "political character" when applied to a crime, than that given by Mr. Justice Stephen in his History of the Criminal Law of England, which he adopted absolutely, thinking it the most perfect to be found, or capable of being given.— "The third meaning which may be given to the words, and which I take to be the true meaning, is somewhat more complicated than either of those I have described. An act often falls under several different definitions. For instance, if a civil war were to take place, it would be high treason by levying war against the Queen. Every case in which a man was shot in action would be murder. Whenever a house was burnt for military purposes arson would be committed. To take cattle, &c., by requisition would be robbery. According to the common use of language, however, all such acts would be political offences, because they would be incidents in carrying on a civil war. I think, therefore, that the expression in the Extradition Act ought

Sir F.J. Stephen's
definition of
offence of a
"political
character."

Chap. III.
Sec. III.

re Castioni,
1891, 1 Q.B. 149.

(unless some better interpretation of it can be suggested) to be interpreted to mean that fugitive criminals are not to be surrendered for extradition crimes, if those crimes were incidental to and formed a part of political disturbances."

The question then was whether or not this was an act done by the prisoner in his character of a political insurgent at that time. The learned Judge continued:—

"If he was a citizen of the place, taking his part in a movement of a political character, which he chose to join in because he thought it was for the benefit of the political side to which he desired to attach himself, I cannot come to the conclusion that he is to be deprived of the privilege of the refuge afforded to him simply because, even after the palace was broken into, having a revolver in his hand, he did make use of it in a way which is very much indeed to be deplored, because I find no evidence which satisfies me that his object in firing at Rossi was to take that poor man's life, or to pay off any old grudge which he had against him, or to revenge himself for anything in the least degree which Rossi or any one of the community had ever personally done to him. When it is said that he took aim at Rossi, there is not a particle of evidence that Rossi was even known to him by name. I cannot help thinking that everybody knows there are many acts of a political character done without reason, done against all reason; but at the same time one cannot look too hardly [at] and weigh in golden scales the acts of men hot in their political excitement. We know that in heat and in heated blood men often do things which are against and contrary to reason; but none the less an act of this description may be done for the purpose of furthering and in furtherance of a political rising, even though it is an act which may be deplored and lamented, as even cruel and against all reason, by those who calmly reflect upon it after the battle is over."

Stephen, J., contented himself with saying that he thought Mr. Mill had made a mistake upon the subject,—

"probably because he was not accustomed to use language with that degree of precision which is essential to everyone who has ever had to draft Acts of Parliament, which, although they may be easy to understand, people continually try to misunderstand, and in which therefore it is not enough to attain to a degree of precision which a person reading in good faith can understand; but it is necessary to attain if possible to a degree of precision which a person reading in bad faith cannot misunderstand. It is all the better if he cannot pretend to misunderstand it. . . .

I will only say with respect to the facts, that it is obvious to my mind that the shooting on this occasion took place in a scene of very great tumult, at a moment when, if a man decided to use deadly violence, he had very little time to consider what

was happening and to see what he ought to do, and that, therefore, he was committing an act greatly to be regretted."

Chap. III.
Sec. III.

The prisoner was set at liberty, although Mill's definition, which had been cited in his favour, was rejected. The Court thought he did not want so wide a principle to warrant his release.

re Castioni,
1891, 1 Q.B. 119.

The decision must be taken to lay down as law the words used by Sir Fitzjames Stephen, that "fugitive criminals are not to be surrendered for extradition crimes, if those crimes were incidental to and formed part of political disturbances."

This is manifestly a narrower definition than the one suggested by Mill. "Political disturbances" probably means no more nor no less than "civil war, insurrection, or political commotion;" but many acts may be done "in the course of or furthering" such disturbances which are neither "incidental to" nor "form part of" them. It should be noted further, that Sir Fitzjames Stephen's examples were all acts which might occur during civil war, acts which would occur during any war, but which if not done during war would be civil offences. To take another man's cattle is robbery; to take cattle by requisition is an incident of war; and civil war, as it is commonly understood, is put on the same footing as war. But the exception to extradition was not intended to apply solely to crimes committed during a civil war; political disturbances fall short of war, and the exception was intended to cover offences incidental to—as it is put in some of the treaties, "*connexe à*"—such disturbances, without reference to the fact that they may or may not be high treason. To pursue the case already referred to; suppose cattle, or other property, say, money, to be taken without the formality of a requisition; it would probably be in furtherance of the political objects, but it would be extraneous to the actual disturbance, not incidental to it, not forming any part of it. But it may very well happen that if the political disturbance had developed into action, and the offences were committed during the action, then that they would come within the principle. This I think is the real meaning of the decision. It is perfectly true that Mr. Justice Denman considered that there was something approaching a state of war in the Canton; but I suggest that this was unnecessary and an undue limitation of the rule, and that something less than war is sufficient for it to be applied. The political disturbance which existed had developed into action of a very serious nature, and what was done was done in the course of this action.

"Offences of a
political
character"
considered.

Chap. III.
Sec. III.

“Offences of a
political
character”
considered.

At this point, however, it would seem that a special enquiry into the circumstances of each case is essential. Even taking the condition precedent, action, to be fulfilled, it is impossible to contend that everything that occurs, every offence that is committed, during the course of that action, falls within the exception to extradition. The Court rejected the statement that the death of Rossi was not necessary to the rising, as having no bearing on the question; but there is another question which seems very pertinent to it, whether the carrying of firearms was necessary to the political disturbance in its then state. It must, I think, be accepted, that political disturbances *per se* do not require the use of firearms, though the action which they engender does often inevitably lead to their being carried, and if carried, to their being used. The view of the facts taken by the learned Judges certainly warrants the conclusion that in this case the political commotion had reached the pitch when the carrying of firearms was inevitable. The motives for the disturbance were genuine; resistance from the Government might have been expected, and forcible resistance; but here comes the point as to which I feel some difficulty—must not their use to be limited to the necessities of the case? The question is difficult, and I feel justified in putting two hypothetical cases. Suppose Castioni had come across some treasure in the palace; could he have seized it? or some rare plate; could he have put it in his pocket? And if one of the palace servants had resisted him, could he have shot him? Possibly in the case of the treasure, the Court would assume that he took it for the rebellion's good, and would hold him entitled to asylum. But in the other case, would not the Court treat him as both robber and murderer? Even the clumsiest scales would tip against him; and I think the Court would hold that the heat of his political excitement must have somewhat cooled to allow a patriot to commit a common theft. I think, too, that in the case of the treaties with Belgium and France, such acts would not be held to be *connexe á un délit politique*.

The peculiar feature of the question must not be overlooked. It is difficult in stating any part of the case, to avoid saying that such acts may be done “with impunity”. It is almost inevitable that the question should be argued as if political offences were justified by law; or to put it more bluntly, that political offences committed in other countries were justified by English law, or at least were palliated by a maxim, that if men in heated

blood do things which are against all reason, they are guilty of no offence. The same glow of fervour for the political "liberator," which inspired the report of the Commissioners, seems, with respect, to have touched some of the sentences of the judgments in this case. But the offences contemplated are offences against the law of the country where they are committed: would be offences by English law were they committed in England; only he policy has been adopted to make them non-extraditable; and the question is one of pure construction, though of somewhat vague words, used both in the treaties and the Act.

Chap. III.
Sec. III.

"Offences of a political character" considered.

The question of amnesty is another matter, and one which it is for the affronted Government to deal with if it emerges from the fray successfully. Moreover, the unsuccessful rebel must be dealt with in the same way, and have the same glamour thrown round his action.

The doctrine was treated a little more precisely by Cave, J., in *re Meunier*. The extradition was requested in respect of wilfully causing two explosions in barracks in France; the prisoner voluntarily stated that he was an anarchist. It was held that "in order to constitute an offence of a political character, there must be two or more parties in the State each seeking to impose the Government of their own choice on the other; and that, if the offence is [*i.e.* may be] committed by one side or the other in pursuance of that object it is a political offence, otherwise not." The prisoner did not satisfy this test, for he was of the party of anarchy, and the enemy of all Governments.

re Meunier.
1864, 2 Q.B. 415.

These are the only cases in which the first part of s. 3(1) has been considered. We now come to *re Arton*, already referred to, in which the second part of the sub-section was discussed. The prisoner was charged with the following offences, and his extradition demanded by France:—*faux*, fraud by an agent, obtaining money or goods by false pretences, offences against the bankruptcy law, larceny, and embezzlement. The third and fourth points raised by the prisoner concern the present question.

re Arton.
1896, 1 Q.B. 108.

The third was that the demand was not made in good faith and in the interests of justice; the fourth, that offences, political in their character, were imputed in France to the prisoner, and that the surrender was demanded from exclusively political motives.

The fourth point was ordered to be argued first, and it will be convenient to follow the course of the judgment.

Chap. III.
Sec. III.

The ulterior
motive for the
requisition.

Meaning of
"in fact with
a view, &c."

The bare enumeration of the offences charged was sufficient for the Court to hold that they were completely divested of any trace of a political character; this was the first step, and it took the case out of the first part of the sub-section. Then came the suggestion contained in the words of the second part, "in fact with a view, &c." As to this the Court held that the suggestion which the Act allowed the prisoner to make meant, "that a person having committed an offence of a political character, another and wholly different charge is resorted to as a pretence and excuse for demanding his extradition in order that he may be tried and punished for the offence of a political character which he has already committed."

The description of case which the prisoner had put forward given by Wills, J., shows how far removed it was from any meaning that could be given to the section. It was admitted by counsel, that he "cannot suggest any conduct of the prisoner which can properly be described as of a political character; but he contends that, if upon sufficient evidence the prisoner is properly extradited in respect of crimes charged against him, the consequence will be that when he gets into the hands of the French judicial authorities he will be compelled either to disclose other matters which he knows, and which it is said other people are interested in knowing also, or in default of disclosure to undergo imprisonment, as I understand the suggestion, until he satisfactorily answers their questions." The suggestion was that the prisoner would be examined, and punished for refusing to disclose political secrets; but the Court decided that in order to bring himself within the words of the sub-section, a political offence must actually have been committed. This principle, therefore, seems to emerge: a political offender is not, as such, exempted from being extradited for other offences; he must prove the existence of the ulterior motive in the Government demanding his extradition. The Government may be in ignorance of his political offence, may only suspect it; therefore he is in a cleft stick, for he must prove to the satisfaction of the English Court that he has committed the offence, and thus give the Government the weapon it wants against him.

There does of course come in at this point the difference of French and English procedure. The latitude allowed to the *Juge d'Instruction* is so wide, that when it comes to the examination of a prisoner surrendered for theft, for example, his connexion with political movements might be extracted from him. It

would be impossible for the English Court to criticise this procedure; it must be accepted as a fact by both the Court and the prisoner as it has been accepted by the treaty and the Act. Wills, J., dealt with this in a sentence which puts the point in the clearest light:—"We cannot prevent the French Courts acting on their regular procedure."

Chap. III.
Sec. III.

Political
examination on
after surrender
for ordinary
crime.

But there was this other curious point about the defence: it alleged that others, and not necessarily the prisoner, might be affected by the disclosures which he would make. The Court could not consider such a suggestion. The whole point comes to this: if a political offender, using this term in its normal meaning, or a person who is in the secrets of a gang of political offenders, commits an ordinary crime and flies from justice, he is liable to be extradited; and then not only he, but also his political friends, must take the consequences if his failure to conform to the criminal law results in a discovery of their secrets.

Having thus cleared the ground, we may more easily follow what Lord Russell said on the third ground, which alleged want of good faith. During the argument he said,—

Suggestion of
bad faith.

"The Court cannot permit you to argue the point that a friendly State is not acting in good faith in making this application; that is not a question which the judicial authorities of this country have any power to entertain. . . .

The statute clearly contemplates that a political offence has been already committed, and that under cover of trying the accused for a crime the foreign tribunal will punish him for that past political offence; but your suggestion in the present case is pure speculation."

And in his judgment he added, that it was a "grave and serious statement, not to be put forward except on very strong grounds." I more than suspect that this was addressed to the Bar, for Lord Russell held the traditions of the Bar to be of the highest. An allegation of breach of faith in a foreign State could not be even argued, because it contained "a reflection of the gravest possible kind, not only upon the motive and actions of the responsible Government, but also impliedly upon the judicial authorities of a neighbouring and friendly State." It might be a fact; but even then, "it is not open to us at all to consider such a suggestion. The question bears on the political aspect of extradition, and it must be determined upon a consideration of matters into which this Court is not competent and has no authority to enter. Such considerations, if they exist at all, must be addressed to the

Chap. III.
Sec. III.

The ulterior
motive for the
requisition.

Executive of the country; they cannot enter, and ought not to enter into the judicial consideration of the question."

But then comes the curious point, how this is to be reconciled with the fact that the Act, as interpreted by Lord Russell himself, allows the fugitive to prove the existence of an ulterior object; for it is obvious, as already pointed out, that the mere fact of alleging an ulterior motive inconsistent with the treaty, contains within it an imputation of bad faith. The solution, I think, is found in this: if such an imputation is intended to be made, it can only be made in the manner and form which the Act has provided, and which, it should also be added, is sanctioned by most of the treaties. Therefore, while the prisoner is allowed to allege such an ulterior motive, and suggest that the requesting State is trying to go behind the treaty, by getting hold of the prisoner for one offence "in fact with a view to try him for another," or to punish him for a political offence in respect of which extradition is expressly forbidden, yet he cannot be allowed to put it in so crude a form as an allegation that the demand is not made in good faith. The Courts could not allow so plain a fact to be stated quite so baldly; for the obvious reason that if once a departure from the words of the treaty and statute were sanctioned, such a suggestion might be made in any case where a political offence was not in question. If the accepted construction of s. 3 (1) is sound, the words do sanction the proof of an ulterior object, that is, a bad ulterior object; and I do not think the expressions which fell from Lord Russell, go further than the above explanation of them, or can be understood to whittle away the provision of the sub-section.

Trial to be limited to the extradition offence.

The second restriction provided by sub-section (2) of s. 3 is as follows:—

Fugitive to have
opportunity of
returning before
trial for another
crime.

A fugitive criminal shall not be surrendered to a foreign State unless provision is made by the law of that State, or by arrangement, that the fugitive criminal shall not, until he has been restored or had an opportunity of returning to Her Majesty's dominions, be detained or tried in that foreign State for any offence committed prior to his surrender other than the extradition crime proved by the facts on which the surrender is grounded.

The two cases which this restriction contemplates are, trial in the requesting State for an extradition crime other than the one

for which the prisoner was surrendered, and trial for a non-extradition crime; but the sub-section does not distinguish between them. The only question which has at all exercised the Courts is the meaning of the words "unless provision is made by the law of that State or by arrangement." So far as "arrangement" is concerned, it may mean that an undertaking is to be given in each case; but this is not probable, and the better opinion would seem to be, that the fact that there is a clause to this effect in the treaty in question is sufficient within the meaning of the sub-section. The other question is what amounts to a "provision made by law."

Chap. III.
Sec. III.

Limitation of
trial to
extradition
offence.

The two cases in which this question has been discussed arose under the old treaties with France and the United States. The Act of 1870 had been passed which introduced the new requirement, and they had not been replaced by new treaties. There was no clause in them such as is now introduced in the treaties, and therefore there was no arrangement; and the Courts had to enquire whether there was any provision in the foreign law to meet the case. If the view advanced as to the meaning of "arrangement" is correct, the question is academic so far as it relates to the countries with which we now have the usual treaties. But it is still an important point in the case of those countries with which we have only unilateral treaties.

In *re Bowier*, the prisoner had been condemned by the French Courts for three offences, one of which was not within the treaty. The evidence adduced to prove the French law was a circular issued by the *Garde des Sceaux* to the Law Officers of the Government, laying down the principles by which they were to be guided in extradition cases, among which this restriction was included. The Court considered that this amounted to a provision made by the French law; and being further satisfied that the French Courts would treat the circular as authoritative, it was held that the requirement of the Act was fulfilled. It should be noted, however, that one of the statements in the affidavit of the French lawyer, that "it is a principle of French and of international law," would hardly satisfy the requirement.

re Bowier,
42 L.J. Q.B. 17

The question again arose in *re Woodall*. There was no express provision in the law of the United States on the point, but the Supreme Court in the case of *U. S. v. Rauscher*, had held that such a provision was a necessary consequence of the fundamental principles of extradition: that by necessary implication it must be read into the Ashburton Treaty, as if it were

re Woodall,
57 L.J. M.C. 72.
U. S. v. Rauscher,
12 Davis [U.S.] 407.

Chap. III.
Sec. III.

Limitation of
trial to
extradition
offence.

cf. p. 43.

incorporated into it. This decision was binding on all Federal and State Courts, and the Court was satisfied that this was a "provision" of the American law fulfilling the requirement of the Act.

On a previous page I have pointed out that the enquiries in these two cases do not seem to be justified by the interpretation of s. 5, which does not allow the validity of the Order in Council to be questioned in any legal proceedings whatever. Lord Coleridge said that the requirement of the Act was absolute, and that if it were not fulfilled, the prisoner would be entitled to his liberty. But the attention of the Court was not called to the point. By the repeal clause, s. 27, the new Act of 1870 was to apply to the old treaties "in the same manner as if an Order in Council referring to such treaties had been made in pursuance of this Act." This clause is considered in a subsequent Section.

But although, as I have said, the question is academic, the argument of the learned American Judge in the case just cited, deriving the rule from first principles is very important, more especially as Lord Coleridge expressed his entire concurrence with it. It is advisable, therefore, to give a few extracts from the judgment of Miller, J.

Judgment in
U. S. v. Rauscher,
12 Davis
[U.S.] 407.

"Prior to the treaties, and apart from them, it may be stated as the general result of the writers upon international law, that there was no well-defined obligation on one country, to deliver up such fugitives to another, and though such delivery was often made, it was upon the principle of comity, and within the discretion of the Government whose action was invoked; and it has never been recognised as among the obligations of one Government towards another, which rest upon established principles of international law."

Chancellor Kent had held in the case of Daniel Washburn that there was such a duty. But in *Short v. Deacon*, Tilghman, C.J., held the contrary—that the Judges could not legally deliver up a fugitive, nor command the Executive to do so, and that no magistrate could cause a person to be arrested for the purposes of extradition. From this the principle that the fugitive could not be tried for another offence when there had been a legal extradition, logically followed: and it—

Short v. Deacon,
cit. ib.

"commends itself as an appropriate adjunct to the discretionary exercise of the power of rendition, because it can hardly be supposed that a Government which was under no treaty obligation nor any absolute obligation of public duty to seize a person who had found an asylum within its bosom and turn him over to another country for trial, would be willing to do this, unless

a case was made of some specific offence of a character which justified the Government in depriving the party of his asylum. It is unreasonable that the country of the asylum should be expected to deliver up such person to be dealt with by the demanding Government without any limitation, implied or otherwise, upon its prosecution of the party."

Chap. III.
Sec. III.

Limitation of
trial to
extradition
offence.

Therefore an offence must be specified; and it follows from this that no other offence can be proceeded on after his rendition, for otherwise there would be no reason for particularising extraditable offences. Extradition is for a limited and definite purpose, and it is impossible to conceive the exercise of jurisdiction for any other purpose. The United States statute provided in the converse case, that in case of a demand the prisoner is to be delivered up to be tried for the crime of which such person is accused [Rev. Stats, s. 5,272], and the same is provided in the case of persons surrendered to the States, by s. 5,275.

The note in the report of the English case adds, that Alice Woodall was in fact extradited for forgery, on the trial for which she was discharged; and the American Courts held that she could not be tried for any other offence.

The last two restrictions in s. 3 are formal in their nature. The 3rd sub-section provides that existing trials and sentences for other offences committed by the prisoner in this country are to be completed before he is extradited; the 4th, that a delay of 15 days is to expire after his committal before a fugitive is actually surrendered. This allows the Secretary of State to go into the matter finally and decide on the surrender; for the question of the offence being political may still be open, and if the fugitive is a British subject there is a discretion to be exercised under some of the treaties. It also gives the prisoner a reasonable time in which to apply for a *habeas corpus*.

Existing trials
in England to
be completed.

Surrender not
to be within
15 days of
committal.

(3) A fugitive criminal who has been accused of some offence within English jurisdiction not being the offence for which his surrender is asked, or is undergoing sentence under any conviction in the United Kingdom, shall not be surrendered until after he has been discharged, whether by acquittal or on expiration of his sentence or otherwise;

(4) A fugitive criminal shall not be surrendered until the expiration of 15 days from the date of his being committed to prison to await his surrender.

Generally, with regard to these provisions, s. 4 provides that the Order in Council applying the Act in the case of any foreign State is not to be made, "unless the arrangement . . . is in

Chap. III.
Sec. III.

Order in Council
not to be issued
unless s. 3
complied with.
cf. p. 42.

conformity with the provisions of this Act, and in particular with the restrictions on the surrender of fugitive criminals contained in [s. 3 of] this Act." The effect of this has already been explained.

SECTION IV.

*The extradition of Subjects.—Naturalized Subjects.—
Concurrent jurisdiction.*

Section 6.

Treaty obligation
made effective
by s. 6.

The general principles governing the surrender having been settled, s. 6 proceeds to declare the liability of fugitive criminals to be apprehended and surrendered in the manner provided in the sections following. This is the operative section, which makes the English treaty obligation to surrender to the other High Contracting Party effective. It applies to "every fugitive criminal of that State who is in or suspected of being in any part of His Majesty's dominions": unless any part has been excluded by the Order in Council applying the Act [s. 2, 2nd paragraph].

The section applies to offences committed before or after the date of the Order. This was explained by s. 2 of the Act of 1873, to include offences committed before the passing of the Act of 1870.

The section also applies "whether there is or is not any concurrent jurisdiction in any Court in Her Majesty's dominions" over the crime. Several distinct and important points arise under these provisions.

The surrender of British subjects.

Surrender of
subjects not
forbidden by s. 3.

The first point to be noted is that the restrictive section, s. 3, with which we have just dealt, does not exclude the surrender of British subjects. Neither does it exclude the surrender of subjects of another State. But on the ordinary principles of construction of criminal statutes, both categories of persons are expressly within the Act; for by s. 26, the term "fugitive criminal" means,—

any person accused or convicted of an extradition crime committed within the jurisdiction of any foreign State who

is in or is suspected of being in some part of His Majesty's dominions;

Chap. III.
Sec. IV.

and the term "fugitive criminal of a foreign State" means,—
a fugitive criminal accused or convicted of an extradition crime committed within the jurisdiction of that State.

It is well-established that when a statute uses the expression "any person," it applies to all persons who are within the area of its application, because every person within a country is subject to its laws in the absence of express provision to the contrary; and this is irrespective of nationality. The scope of the Extradition Act in virtue of the above definitions, is to surrender "any person" who is a fugitive from the justice of a foreign State; it therefore applies to all persons who have committed an extradition offence within that State. Further, the general rule being that persons are not tried for offences committed in another country, there is no principle of law on which the fugitive can rely to take him out of the statute, so far as the laws of this country are concerned. Nor is there any general rule which, if the act was in fact committed in a foreign country, would take him out of the application of the law of that State. A point, which has not arisen in the Courts, must, however, be suggested here: whether a fugitive, not a subject of the foreign State, might prove that the foreign law under which the foreign warrant was issued, did not apply to persons not subject to that State.

cf. "Nationality,"
Pt. II, p. 161.

"Any person"
may be
surrendered.

But whether, in fact, subjects of the requested country may or may not be surrendered, depends on the arrangement come to with that country. The practice varies, as will be seen from an examination of the treaties. In some cases it is absolutely prohibited; in some it is made discretionary; in some, the recommendation of the Commissioners has been adopted by both Contracting Parties, subjects not being excluded; and in a few, for example, the treaties with Spain and Switzerland, England has agreed to a unilateral arrangement, surrendering British subjects, although the other State refuses to do so.

Persons to be
surrendered
depends on
treaty.

cf. p. 18.

There is a clause in many treaties [*e.g.* France, art. II] putting naturalized subjects on the same footing as native-born subjects. The Act does not mention them; but there can be no doubt that they are included in the exception, at least with regard to persons naturalized in the United Kingdom. Extradition only takes place when the fugitive is in this country; and therefore the point, much discussed in another work, how far

Naturalized
subjects.

Chap. III.
Sec. IV.

the rights and duties of naturalized persons extend does not arise; for the narrowest construction of the Naturalization Act, 1870, treats them on the same footing as natural-born subjects when they are in the United Kingdom.

cf. "Nationality,"
Pt. I, p. 116.

A difficult question would arise if the surrender of a person naturalized were asked by the country of his former nationality, if by the laws of that country he has not ceased to be a subject of it. For, at the time of committing the offence, he would, under the conditions of naturalization, contained in s. 7 (3rd para.) of the Naturalization Act, 1870, have lost the benefit of his naturalization; and his return to this country might be looked on as equivalent to a subsequent naturalization. But the question would probably be decided on the broader ground, that in the absence of any express reference to naturalized subjects in the treaty, the word "subjects" would not be held to include naturalized subjects in any case where the law of other Contracting Party did not recognise naturalization as divesting its subjects generally, or any subject in particular, of their or his nationality.

cf. *ib.* p. 113.

33 & 34 Vict.
c. 14.

Persons
naturalized
in colonies.

cf. *ib.* Chap. XV.

In the case of persons naturalized in the colonies the question is not simple, because the scheme of colonial naturalization differs essentially from that of the mother-country. In cases where the exception of subjects is absolute, it would seem that, although they are British subjects only when and while they are in the colony in which they have been naturalized, they would be entitled to the benefit of the exception. If however, they had taken refuge in another colony, their naturalization would be of no avail.

Surrender of
subjects.
re Galwey,
1896, 1 Q.B. 230.

The surrender of subjects was considered in *re Galwey*, in the case of a fugitive about to be surrendered to Belgium. In the original treaty with that country subjects were excluded from its provisions. But in 1887, a new treaty was concluded, in which the following clause was inserted:—

In no case, nor on any consideration whatever, shall the High Contracting Parties be bound to surrender their own subjects, whether by birth or naturalization.

The point was taken, probably on account of the somewhat superfluous words in the article, that a British subject was not liable to be surrendered at all. The Court held that as neither country was bound to surrender its subjects, they might be surrendered, and that this was a question for the Secretary of State with which the Courts had nothing to do. Lord Russell

intimated his opinion that the Secretary of State might exercise his discretion at any stage, even after he had given his preliminary, or presumably his final order. The decision in *R. v. Wilson* was approved, where possible variations in language had already been pointed out by Field, J.;—"It is not [in the treaty with Switzerland] that one country shall not be bound to deliver up, but that no subject shall be delivered up."

Chap. III.
Sec. IV.

R. v. Wilson.
3 Q.B.D. 42.
cf. ante, p. 36.

But if the treaty does exclude the surrender of subjects absolutely, leaving no discretion in the matter, the burden of proving that he comes within the exception is on the prisoner. This was decided in *re Guerin*. The fundamental principles of extradition support this view. For the faith which one Government must repose in the official statements of another justifies the acceptance as a fact, at least for the purposes of the preliminary steps, the statement that an offence has been committed in the country demanding the surrender of the fugitive; and this being the basis of the treaty, the burden of proving that he is a subject of the State requisitioned, and so that the proceedings ought not to be taken on account of the exception, could not fall on that State. But then comes that puzzling question, who is a British subject? By reason of our adherence to the *lex soli* as the governing principle of British nationality, many are subjects without wishing it, often without knowing it; and by reason of our adoption of the *jus sanguinis* only to the extent indicated in the statutes, 7 Anne, c. 5, 4 George II, c. 21, and 13 George III, c. 21, some are not British subjects who think they are. The subject has been so fully dealt with in another work, that I do not propose to refer to the many questions which the combined effect of the Naturalization Act and Extradition Act must give rise to, nor to suggest the solution of the one which might arise in the case of a person with double nationality. Persons with no nationality have no exception to claim.

Onus on prisoner to prove that he is a subject.

re Guerin.
60 L.T. 538.

Meaning of "British subject."

cf. Nationality.
Pt. I, Chap. IV.

The terminology of the law of nationality is a little confusing, because birth is the determining factor under both principles; the place of birth under the English system, the father under the continental system, and therefore "native-born" is a term apt to both. In *re Guerin*, cited above, Wills, J., pointed out that this term, used in art. II of the French treaty, is identical with the term "natural-born," more commonly used in English law and in the Naturalization Act; § and that "native" means

Meaning of "native-born."

33 & 34 Vict.
c. 14.

§ "Any person who by reason of his having been born within the dominions of Her Majesty is a natural-born subject, . . ." [Naturalization Act, 1870, s. 4].

Chap. III.
Sec. 1 V.

“native from the circumstances of a person’s birth.” The word “native” is equally applicable to a person born in England, and so an English subject, and to a person born of French parents, and so a French citizen, by English and French laws respectively.

ex p. Guerin.
51 Sol. Jo. p. 571.

The decision in *ex parte Guerin* is somewhat difficult to follow. The prisoner had escaped from the French penal settlement in Guiana, and had found his way to England. His extradition was demanded, and the magistrate committed him; but on an application for a *habeas corpus*, he contended that he was a British-born subject; the evidence being, (*i*) that his father was a natural-born subject born in Ireland; (*ii*) that his parents, who lived in America, had never become naturalized there. The Attorney-General seems to have accepted the argument that as he was the son of a natural-born British subject, the onus was on the Crown to shew that he had changed his nationality, and there being no evidence of this, the Court held that he must be deemed a British subject, and was entitled to his discharge. The first point is clear; the naturalization of a father carries with it, subject to certain conditions, a change in the nationality of his infant children. If these conditions had been fulfilled, Guerin would have been an American citizen, and would have been liable to surrender. But, with great respect, the second part of the decision seems to be in conflict with the earlier decision in *re Guerin*; for if the onus is on the prisoner to prove that he is a British subject, he does not do so by simply showing that his father is a British subject, unless he also shew that he was born abroad, and comes within the provisions of the statutes referred to above. The point that the son of a British subject is not necessarily a British subject is often overlooked; as well as the correlative proposition that birth in a foreign country, for example, France, does not necessarily make the person a Frenchman.

re Guerin.
60 L.T. 538.
cf. ante, p. 67.

cf. Nationality,
Pt. II, p. 54.

Subjects of
other States.

Subjects of third States are not referred to in any of the modern treaties;§ they fall under the general provisions for the surrender of “any person”; and, as indicated above, there is no principle by which they can claim exemption, either from the

cf. p. 69.

§ In the old treaty with the Netherlands, on the construction of which *R. v. Ganz*, was decided, there was however, a provision that the word “subject” was to include, not only “naturalized citizens of the country, but also such foreigners as, according to the laws of either of the Contracting Parties, are assimilated to subjects, as well as such foreigners who, being domiciled in the country and having married a citizen thereof, have one or more children born there.”

the law of the country where they committed the offence, or from the law of England, which enables them to be surrendered. Nevertheless, the point was deliberately argued, and the extravagant argument advanced in *R. v. Ganz*, that the treaty-making prerogative only extends to the subjects of each country, and that therefore the subjects of third Powers could not be surrendered. But third Powers have no *locus standi* in the matter, and cannot demand or expect to be parties to the arrangement; otherwise every country would have to be a party to all the treaties made by every other country. In the case the prisoner had committed a crime in Holland, and his surrender was demanded. He alleged that he was a naturalized citizen of the United States, and claimed to be exempted from the treaty between England and Holland. The argument hardly needed the elaborate suggestion of Pollock, B., to refute it, that a man must be taken *prima facie* to be the subject of the country in which he commits the offence at the time of committing it. "Does it follow," he asked, "that because a man is a naturalized subject of the United States he may not for this purpose be a subject of the Netherlands?" § This somewhat involved doctrine seems to have been suggested by the definition of "subjects" in the treaty, which is given in the footnote on p. 68; the point made by the learned Baron being that foreigners were assimilated to subjects for the purposes of the criminal law. But it was also used to meet a troublesome little point which was raised on the construction of the treaty, which provided that the demand for surrender should be made by the diplomatic agent of "his" [*i.e.* the prisoner's] country"; and the learned Judge, following out the same train of thought, held that "his country" meant the country within whose jurisdiction he was for the purposes the criminal law.

This is one of those curious little slips which occur in the drafting of the treaties; it has been rectified in the new treaty with the Netherlands, but it still exists in many treaties. The point of the argument for Ganz was that as the treaty expressly required the requisition to be made by the Diplomatic Agent of "his" country, it was an additional argument to shew that extradition was limited to subjects; because it could not have been intended "that the American Minister should apply for the

§ The learned Baron is reported in the Law Times to have said,—“A man may be a vagrant, that is, of no country, and the law seeks to give him a domicil. Here you start with the proposition that Ganz was at a certain date in the Netherlands, and that there he did commit certain acts . . . therefore the presumption is, he is a subject of that country.” *R. v. Ganz.* 46 L.T. 592.

Chap. III.
Sec. IV.

prisoner's surrender to the Dutch Government." But looking at the word "his" as a slip, it is one which only affects the conduct of the negotiations between the two Governments; and without going to the length of saying that in no case could the prisoner avail himself of a mistake in the negotiations, or preliminary proceedings, it may, I think, be safely said that this is not so vital a discrepancy between the provisions of the treaty and what actually took place, as to make the legality of the prisoner's arrest depend upon it. The point however is not an unimportant one; and when we come to examine the treaties, we shall find that in some instances the preliminary procedure has been drafted with extreme care.

Who are "fugitives"?

Meaning of
"fugitive
criminal."

Crimes
committed in
two countries.

R. v. Nillins.
53 L.J. M.C. 157.

The normal meaning of fugitive criminal is, of course, one who having committed a crime in any country, flies from it to escape the consequences. But the criminal law is familiar with, and attempts to deal with crimes which are sufficiently complex to be committed by continuous action in two or more countries. The question whether they come within the terms of the Act was discussed in *R. v. Nillins*. The prisoner, being in England, wrote and sent letters containing the alleged false pretences to persons in Germany, thereby inducing them to part with goods and deliver them to the order of persons in Hamburg. In these circumstances the crime might or might not have been triable in England as well as in Germany; if it had been triable in both, it would have been a case of concurrent jurisdiction, falling within the provision of s. 6 in that behalf, to be presently considered.

But so far as the definition of "fugitive criminal" is concerned, this question is immaterial, and the man's surrender was asked for by Germany. The treaties are simple, and clearly include the case; for the common form of the agreement to extradite refers to "those persons who, being accused or convicted of any of the crimes or offences" enumerated in the treaty, "committed in the territory of the one Party, shall be found in the territory of the other Party." But this man had also to be brought within the statutory definition; and this includes any person accused of an extradition crime, "who is in, or suspected of being in" England; this therefore also clearly covered the case.

Of course the Court must be satisfied that the act,—the crime or part of the crime—was committed in the requisitioning country. In the case we are considering the question is whether

Criminal to be
surrendered
if he is "in"
England.

actual presence in the country is necessary to the commission of a crime: where the act is made criminal by a territorial and not by an extra-territorial law. I take the answer from the judgment of Cave, J., in this case:—"It is clear that there may be cases where a person has committed a crime in a foreign country without even being there." This applied to the case of Nillins, because he had procured the goods in Germany, had uttered certain forged notes there, and had obtained the delivery of the goods to his agent there. There may of course be much more complicated cases; but it will be sufficient to indicate the nature of the discussion to which this question leads. In *R. v. Keyn*, Cockburn, C.J., considering the case of an act done on one ship followed by consequences on another, arrived at the conclusion that if the two are linked by a continuing intention, then it is committed in both countries; but otherwise, more especially in cases of negligence, the person commits the offence in the country where the act occurred, and he is not brought constructively within the country where the consequences result.

Chap. III.
Sec. IV.

R. v. Keyn,
2 Ex. D. at p. 232.

The doctrine of
"continuing
intention."

cf. Nationality,
Pt. II, pp. 62,
et seq.

The question is exceedingly complicated, and, as I have discussed it at some length in another work, it is unnecessary to go into it again. It is sufficient for my present purpose to accept the fact that a person may by his acts bring himself within the territorial laws of two countries, being actually present in one and constructively present in the other. Therefore both countries have territorial jurisdiction over him; and, as in the case of Nillins, the country in which he is constructively present may demand his extradition from the other.

The important question which arises in applying this to the law of extradition is, by what jurisprudence is the question of the *locus* of the crime to be decided? Theoretically, by the law of the country which alleges the crime to have been committed in it; and s. 6 allows the surrender to be made even if there is concurrent jurisdiction in England and the foreign country. If English jurisprudence negatived the commission of the crime in the foreign country, and maintained it to have been solely committed in England, then a troublesome conflict arises which requires the most careful consideration.

*Extradition in cases of crimes over which both States have
concurrent jurisdiction.*

This section, s. 6, provides that the fugitive criminal is liable to be apprehended and surrendered, in respect of an extradition

Chap. III.
Sec. IV.

crime, even though there is concurrent jurisdiction over it in some British Court.

re Timan.
5 B. & S. 645.

Concurrent
jurisdiction in
case of piracy
jure gentium.

This provision alters the law as it was laid down in *re Timan*. By the Ashburton Treaty the agreement with the United States was to deliver up all persons who were charged with committing the crimes specified, "within the jurisdiction of either of the High Contracting Parties." The prisoner was charged with piracy *jure gentium*; the treaty only referred to piracy; and the question was whether this included piracy *jure gentium* as well as piracy by the municipal law of each State. In the latter case the Courts of the country in which the offence took place would alone have jurisdiction to try it, and therefore extradition would be appropriate; but in the former case, the crime being against all nations is punishable by all. The Court of Queen's Bench was divided; Crompton, Blackburn, and Shee, JJ., holding that the treaty only contemplated the surrender of persons charged with offences within the exclusive jurisdiction of the requesting State, and that it could not be supposed that a State would have agreed to surrender a fugitive when it might try him itself. Cockburn, C.J., dissented, holding that the language was comprehensive; the surrender might be highly convenient, for, as in the case of a murder by a British subject in the United States, all the evidence might be there, rendering the trial almost impossible in this country.

It is unnecessary to examine the judgments at any length, because the case is no longer law, and the Court was dealing with an admittedly very imperfect treaty. The Act now deals with the question of concurrent jurisdiction specifically; the treaties, as we shall presently see, deal with it indirectly, settling certain details which are consequent on its existence. The question which arises under the section is whether in this case the obligation to surrender still remains obligatory when concurrent jurisdiction exists; but this cannot be decided until the provisions of the treaties have been examined. It will, however, be convenient here to examine an important case, in which some fundamental principles were considered, and in which this question of concurrent jurisdiction was incidentally referred to, in interpreting the unilateral arrangement with China, *Attorney-General of Hong Kong v. Kwok A Sing*.

*A.-G. of Hong Kong
v. Kwok A. Sing.*
L.R. 5 P.C. 179.

The prisoner was one of a number of coolies who had shipped on board a French ship at Macao, bound for Peru. Kwok and seven others were selected to act as headmen during the voyage.

Some of the coolies complained of being kidnapped. In October, while the vessel was at sea, Kwok and several others attacked the captain and crew, killed some of them, and threw their bodies overboard. They then took charge, compelled the remaining seamen to take the ship back to China, where they landed and abandoned her. Some of them were arrested and tried in China, but Kwok escaped to Hong Kong. He was arrested there, and charged with being a suspicious character and a person dangerous to the peace and good order of the colony. Whilst he was under arrest, an application was received from the Chinese authorities at Canton for his extradition. The magistrate found that there was cause to believe that he was guilty of a crime against the laws of China, and committed him pending surrender.

Chap. III.
Sec. IV.

Kwok A Sing's case considered.

A *habeas corpus* was obtained, and on the argument, the Chief Justice ordered the prisoner to be released, for the following reasons. The ordinance then in force was No. 2 of 1850, which carried into effect art. IX of the Treaty of the Bogue. That treaty had been abrogated, and after the war with China the Treaty of Tientsin had been signed, which contained a new extradition clause; a new ordinance was therefore necessary to carry this new clause into effect. § Secondly: in accordance with *re Tinnan*, the crime if anything was piracy, and being justiciable in the colony, there was no ground for giving up the man. Thirdly, extradition is confined to crimes committed in the demanding country, and this crime was committed on the high seas, and on board a French ship; but, applying the second reason, even a claim by France ought to be refused. Fourthly, the man was under unlawful coercion on the ship, and it was therefore doubtful whether the act of the man was not a lawful attempt to free himself from such restraint.

re Tinnan.
5 B. & S. 645.

§ The Treaty of the Bogue was concluded with China in 1848, the Hong Kong Ordinance giving effect to it being No. 2 of 1850. Art. IX provided, that "if lawless natives of China, having committed crimes or offences against their own Government, shall flee to Hong Kong, or to the English ships of war, or English merchant ships, for refuge, they shall, if discovered by the English officers, be handed over at once to the Chinese officers for trial and punishment. . . ." In 1858, after the war with China, the existing Treaty of Tientsin was concluded, the ordinance giving effect to it being No. 7 of 1889. Art. XXI provides, that "if criminals, subjects of China, shall take refuge in Hong Kong, or on board British ships there, they shall, upon due requisition by the Chinese authorities, be searched for, and on proof of their guilt, be delivered up." The treaties with China.

Chap. III.
Sec. IV.

Kwok A Sing's
case considered.

Effect of
unilateral treaty
to surrender for
offences against
law of oriental
country.

A claim by the French consul was thereupon abandoned. The Attorney-General then caused Kwok to be arrested on a charge of piracy *jure gentium*, and he was committed to prison under a warrant. A second *habeas corpus* was issued, and the Chief Justice ordered the man's release on the ground that the second arrest was a violation of s. 6 of the Habeas Corpus Act, because it was for the same offence as that first alleged against him, and in respect of which he had been set at large. Leave was granted to appeal to the Privy Council to reverse the two orders of discharge. The judgment of Mellish, L.J., first dealt with the relation of the ordinance with the treaty. It will facilitate the understanding of the judgment to know that the Ordinance No. 2 of 1850, following the treaty, simply gave jurisdiction to the magistrate to commit for surrender Chinese subjects charged with having committed "any crime or offence against the laws of China." The new Ordinance, No. 7 of 1889, however, is modelled on the English Act of 1870, and contains a schedule of the crimes in respect of which alone the surrender can be made.

"The first question which their Lordships will consider is whether assuming that there was sufficient *prima facie* evidence against Kwok A Sing to prove that he was guilty of the murder of the French captain, and that he was guilty of piracy *jure gentium* in running away with the French vessel, these acts constitute crimes and offences against the law of China within the meaning of s. 1 of Ordinance No. 2 of 1850, or crimes and offences against the Government of China within the preamble of the same Ordinance. There is no doubt that the extreme generality of the words "crimes and offences against the law of China" makes their construction very difficult. They cannot be intended to mean that every Chinese subject who is proved to have done something which the law of China makes a crime or an offence is to be given up to the Chinese Government. If this were the meaning of the words, every Chinese who had done something which the law of China treats as a political offence, or who had done something which the law of China treats as criminal, though the law of all European countries treats it as innocent, might be given up. Some limitation, therefore, must be put upon the meaning of the words; and their Lordships think that, in determining what that limitation is to be, they ought to bear in mind the position of the colony of Hong Kong with reference to China. There was, when the treaty was made, a manifest risk that the colony of Hong Kong might become the refuge of the criminal classes of the city of Canton and other Chinese towns; and it was impossible that the Colonial Government could punish Chinese subjects for acts committed within the territory of China. Having regard

to this object, their Lordships think that the words "crimes and offences" ought to be confined to those ordinary crimes and offences which are punishable by the laws of all nations, and which are not peculiar to the laws of China. In the Treaty of Tientsin the persons to be delivered up are described generally as criminals. All ordinary crimes—such as murder, robbery, theft, arson, committed by a Chinese within Chinese territory or in Chinese ships on the high seas would be within the meaning of the Ordinance."

Chap. III.
Sec. IV.

Kwok A Sing's
case considered.

Now piracy is an offence both by municipal law and *jure gentium*; and their Lordships were willing to assume that it was an offence by the municipal law of China:—"If Chinese subjects, starting from, and returning to, Chinese territory, attack a ship of some other nation, whether in harbour or at sea, they, making that territory as it were the base of their operations, must be held to commit an offence against the municipal law of China and against the Chinese Government, whether they commit an act of piracy *jure gentium* or not." But the case of Kwok A Sing was very different; the offence was committed at sea, and he had not returned to China; so that for the Chinese Judiciary to have had jurisdiction, it must have been in one of two ways—either under some extra-territorial law of China, assuming the case not to have been piracy; or, assuming it to be piracy, because, being an offence *jure gentium*, it is punishable everywhere, in China as well as in Hong Kong. The judgment laid down two propositions. First, the ordinance could not be held to apply to offences which might be found in some barbarous code of laws. Secondly, "crimes against the law of China" in the ordinance could not be held to apply to an extra-territorial law of robbery or murder on the high seas in the absence of proof that China had such a law. It was true that England had such a law, but it was of a comparatively late period; and although a nation might make such a law, yet it went beyond the general principle of criminal jurisprudence, that the quality of the act done depends on the law of the place where it is done. But the existence of such a law was not to be assumed. Apart from this, the offence having been committed on board a French ship, ought, if it were not piracy, to be treated as an offence against French law.

Existence of
extra-territorial
law will not be
assumed.

Finally, was it a case of piracy *jure gentium*? Piracy, as defined in *R. v. Dawson*, "is only a sea term for robbery, piracy being a robbery within the jurisdiction of the Admiralty." There was sufficient evidence to go to a jury on the question whether Kwok

Definition of
piracy *jure*
gentium.

R. v. Dawson,
13 State Trials, 454.

Chap. III.
Sec. IV.

Kwok A. Sing's
case considered.

re Tivnan.
5 B. & S. 645.
cf. ante, p. 72.

had committed this offence. The Chief Justice had taken this view, and following *re Tivnan*, had held that the prisoner was not to be surrendered. The Judicial Committee did not refer to this case, but were of opinion that he ought to have been tried for piracy in Hong Kong. This decision was given in 1872; but as it was under a special colonial ordinance, it cannot, it is submitted, be regarded as interpreting the provision of s. 6 of the Act of 1870, which we have been considering.

The Committee did not agree with the Chief Justice's opinion that there was a justifiable attempt on the part of Kwok to regain his liberty; and further they thought that the ship was in no sense a slave-ship.

There is one small point of detail which must be mentioned. The Committee thought that the magistrate when he had received the evidence, instead of signing the warrant of committal for surrender, ought to have committed the prisoner to be tried for piracy in Hong Kong. It is submitted, with respect, that the magistrate has no power to alter the character of the proceedings before him. He hears an extradition case in virtue of the order of the Secretary of State, or of the Governor in a colony, and must decide accordingly. If it is thought advisable that there should be a prosecution under the municipal law, then, however inconvenient it may be, there must be a new hearing, when the magistrate will commit or not, as the case may be, for trial at the assizes.

The appeal against the second decision need not detain us long; but it deals with a question of some importance.

The Chief Justice considered that the second warrant was bad because it was a violation of s. 6 of the Habeas Corpus Act. The Judicial Committee held that this section only applied "when the second arrest is substantially for the same cause as the first, so that the return to the second writ of *habeas corpus* raises for the opinion of the Court the same question with reference to the validity of the grounds of detention as the first." The second warrant was to commit Kwok for trial in Hong Kong for piracy *jure gentium*, but the result of the previous application was that he had been discharged from unlawful imprisonment. The contention was therefore unsound on the letter of the warrants; but there is another and more scientific reason. The effect of of s. 6 of the Habeas Corpus Act is practically the same as that of a plea of *autrefois acquit*. In an ordinary case of a

Re-arrest after
release on
habeas corpus.

31 *Car. II, c. 2.*

crime committed in England, the prisoner is not acquitted when he is discharged by the magistrate on the ground that the evidence is insufficient for committal. And so in extradition proceedings, the finding is either that there is no evidence to justify the issue of the warrant of detention in the first instance, or, on the hearing of the case, that there is no evidence to warrant his being committed for surrender. This could not preclude fresh evidence being produced, and another warrant being issued. The nature of the application for extradition does not touch the question of guilt, the English Courts not being concerned with it; and it is only when that question is in issue that the plea of *autrefois acquit* is available.

Chap. III.
Sec. IV.

Refusal to issue
warrant no bar
to further
application.

In some of the treaties [*e.g.* France, art. VI], the article which deals with the procedure in the foreign country contains a special provision to the effect that if the evidence of identity is considered insufficient, the fugitive is to remain in custody "until the British Government has been able to furnish further evidence in order to establish his identity, or to throw light on other difficulties in the examination."

SECTION V.

The requisition, and the arrest.

We now come to the procedure by which the treaty arrangement is carried out, and fugitive criminals surrendered to the country in which they have committed, or are accused of having committed, the crime. Through the whole of it there runs the thread of fundamental principle: the fugitive has committed no offence against the law of this country; he is to be surrendered to another country, because he is accused of having committed a crime in that country, of the facts of which, and of the law concerning which, our executive and judicial authorities have no power to take notice. First therefore, seeing that they cannot move of themselves, nor can be ordered to move by the Executive, if they are to take action there must be a request from the foreign State; and seeing, further, that the right to make such a request depends on treaty, it must emanate from the Sovereign Authority of that State. The document by which the request is conveyed is the "requisition for surrender;" and the formalities which have been prescribed in connexion with it begin with a

Procedure for
carrying out
treaty
arrangement.

Chap. III.
Sec. V.

communication of the fact that it has been made by the Secretary of State to the magistrate, together with an order that he take the necessary proceedings to cause the apprehension of the fugitive. These proceedings, subject to certain appropriate forms which are given in the schedule to the Act, are to be, as nearly as may be, the same which the magistrate would take had the offence been committed in this country. The fact that extradition is no light matter is recognised throughout, and it is not surprising to find the procedure invested with considerable formality. In the case of a fugitive already convicted formality is all the more necessary; for the English Government is asked to enforce a sentence of a foreign Court, given in proceedings in which the Government of the foreign country has itself been a party. It is a sentence to which the English Courts must in other circumstances be oblivious.

Foreign
Government
takes no step
after requisition.

cf. p. 9.

The most important point to be noticed at once is, that the Act confers no power on the foreign Government to take any step after the requisition has been presented: it is a request that the English Government should act. I think there is another principle involved: that the Government of one country, by all the rules of international courtesy, pays high regard to, and reposes implicit faith in, the official statements made to it by another Government. But the difficulty, to which I have already alluded, figures here also; we have little or no clue to what the consequences of omission of any of the prescribed formalities may be. It is also to be noted that the Act does not deal in any way, either by conferring the power, or otherwise, with the making of a requisition by the English authorities to foreign Governments. §

Nationality of
party aggrieved
immaterial.

The procedure is of two kinds; the normal, by way of requisition to the Secretary of State; and the summary, by way of direct application to the magistrate, supplemented in due course by the requisition. Thus in both the requisition from the foreign Government is the basis of the proceedings, and the individual does not appear; he can do no more than set the foreign Government in motion. Further, it is cardinal to the subject that the nationality of the party aggrieved is immaterial; for the crime is against the State, the individual only the person who has suffered by reason of it.

§ In the Canadian Act, and in the law of the Australian Commonwealth, the officers who are to act are specially indicated.

*Procedure by requisition to the Secretary of State.*Chap. III.
Sec. V.

Such an arrangement between the Sovereign Authorities of the two countries having been come to, it might have been supposed that it would be sufficient for the requisition to be presented by a duly accredited representative *ad hoc* of the foreign Sovereign. But s. 7 provides that it is to be made to a Secretary of State, that is to say, to one of the Sovereign's principal official secretaries, "by some person recognised by the Secretary of State as a diplomatic representative" of the foreign Sovereign or State. A diplomatic representative means an Ambassador, a Minister, or a Chargé d'Affaires. By s. 7 of the Act of 1873, this was extended so as to include "any person recognised by the Secretary of State as a Consul-General of that State." We have already noticed that in some of the older treaties the expression "representative of his country" is used.

By whom
requisition to
be presented.*cf.* p. 69.

The section refers to a diplomatic representative "recognised by the Secretary of State;" this must mean a person to whom the King has issued his *exequatur*, and cannot be intended to give any latitude to the Secretary of State in the matter; otherwise a duly accredited agent would have been sufficient. But it might happen that a foreign State should be either permanently or temporarily without such a representative, and no machinery is provided by the Act for such a state of things.

Absence of
"diplomatic
representative."

In the treaty with Peru this point is specially dealt with, and provision made that in default of both Diplomatic Agents and Consular Officers, the requisition is to be made "directly, from Government to Government." This is a deviation from the strict letter of the Act; it occurs moreover with regard to a matter which was considered of sufficient importance to deal with by special amendment in the Act of 1873. Nevertheless, as I have already said with regard to the point raised in *R. v. Ganz*, it is doubtful whether it is a deviation of such a nature that the fugitive could avail himself of it. The point of the provision seems to be to exclude the individual from approaching the Government, at least in the first instance; a point to which we must presently revert.

R. v. Ganz.
9 Q.B.D. 93.
cf. ante, p. 70.

In time of war, and when, as sometimes happens, diplomatic relations are suspended between this and a foreign country, it would seem to follow that extradition between the two countries cannot take place.

No extradition
in time of war.

Chap. III.
Sec. V.

Section 7.

The requisition having been duly presented, s. 7 provides that—

A Secretary of State may, by order under his hand and seal signify to a police magistrate that such requisition has been received, and require him to issue his warrant for the apprehension of the fugitive criminal.

Powers of
Secretary of
State on receipt
of requisition.

The use of the word "may" in this section requires notice. It cannot be discretionary in the broad sense in which the word is sometimes used, for the treaties create an absolute obligation to surrender; it must therefore be taken to be permissive; that is to say, it sanctions the issue of an order to the magistrate which would otherwise be illegal, and must be read in conjunction with the words in s. 11, "it shall be lawful" for the Secretary of State to issue the warrant for surrender. On this point the decision in *R. v. Wilson* leaves no doubt: that so long as the restrictions of the Act are not departed from, there is a positive duty on the executive officers to carry out the treaty obligations of the Sovereign. Therefore it follows that the Secretary of State cannot arbitrarily refuse to comply with the requisition; such power of refusal as he has must be derived from the treaty and the Act combined.

R. v. Wilson.
3 Q.B.D. 42.
cf. ante, p. 36.

The second paragraph of s. 7, indicates one special case in which the Secretary of State may refuse to issue his order to the magistrate:—

When order to
magistrate may
be refused.

If the Secretary of State is of opinion that the offence is one of a political character, he may, if he think fit, refuse to send any such order, and may also at any time order a fugitive criminal accused or convicted of such offence to be discharged from custody.

But there must be other cases in which he may refuse to send the order, which arise directly from the treaty in question in any case: if the offence with which the fugitive is charged is not an extradition offence, either within the treaty itself, or the schedule to the Act; and also if the fugitive is a British subject, and the treaty forbids the surrender of subjects, or makes it discretionary. And there are other points of importance which may lead to the refusal to surrender; failure to establish the identity of the fugitive, or that the crime was committed in the requesting country. The question of the powers of the Secretary of State in refusing to act on the requisition, and so declining to surrender the fugitive, require careful consideration.

It will be well, in the first place, to indicate the different stages of the proceedings at which the Secretary of State is referred to in the Act. Under the second paragraph of s. 7, if he is of opinion that the offence is of a political character, he may refuse to send his order to the magistrate, and may at any time order the fugitive to be discharged. It would appear from the words "may, if he think fit," that there is some latitude allowed to the Secretary of State in this matter. But the duty not to surrender in the case of these offences is made absolute by s. 3; what is probably meant is, that although he is of that opinion, yet he may require more evidence to confirm him in it, and therefore he is not compelled to refuse the order at once. Under s. 8, he may on the receipt of the magistrate's report after the issue of the summary warrant, order it to be cancelled, and the person arrested to be discharged. Under s. 10, if the magistrate commits the fugitive, a certificate of the committal, and a report upon the case, are to be sent to the Secretary of State; but the section indicates no special course of action to be taken thereon; nor does it require a certificate to be sent if the prisoner is discharged. Under s. 11, after fifteen days from the committal for surrender by the magistrate, "it shall be lawful" for the Secretary of State to order the fugitive to be surrendered. There are further the general directions contained in s. 3.

There is manifestly much omitted in these references; and any difficulty which exists in clearly defining the powers of the Secretary of State results from the scrappy way in which the Act is drafted. In the first place, it is puzzling to find a reason why this incomplete paragraph should have been specially introduced into s. 7. Looked at as a question of drafting, s. 7, which creates the duty of the Secretary of State to comply with the requisition, should, in order to make it complete, have had a clause added indicating all the cases in which he need not comply with it. Yet even with regard to political offences it is incomplete; for it is quite conceivable that even at the time of receiving the requisition the Secretary of State should have been satisfied by the fugitive that it "has in fact been made with a view to try or punish him for an offence of a political character." Furthermore, it is clear that s. 7 applies to cases where the requisition is received after the summary procedure by way of magistrate's warrant has been adopted, when the details of the case have become clearer. And with regard to the other matters above referred to, it is clear that in spite of the special limitation

Chap. III.
Sec. V.

References in
the Act to the
Secretary of
State.

Powers of
Secretary of
State amplified

Chap. III.
Sec. V.

of s. 7 to political offences, the Secretary of State must have the right to refuse to send the order to the magistrate, in the exercise of his discretion, or of his duty to refuse, in the case of subjects: and in the exercise of his duty to refuse, if the crime charged is not within the treaty. It is equally clear that if he may refuse to send the order, he must also in these cases have power to "at any time order the fugitive criminal to be discharged from custody."

on magistrate's
final report.

With regard to the powers of the Secretary of State on the report of the magistrate, under s. 8, it is also clear that they must be the same in all the cases in which he may decline to act. But a special provision is necessary at this point, because the magistrate has issued a warrant without any reference to the Secretary of State, and power must be given to order the warrant to be cancelled, and the person apprehended to be discharged. The powers of the Secretary of State after the hearing are still less explicitly dealt with. But it is still more certain in all the cases, when, as I say, the case is clearer and better understood, not only that he may act on the same principles in issuing or refusing to issue the final warrant for the fugitive's surrender, but also that he may order the warrants of committal and of arrest to be cancelled, and the person apprehended to be discharged. The magistrate's powers in this respect will be considered in due course, and also how far the Secretary of State is bound to accept the magistrate's decision.

re Galwey.
1896, 1 Q.B. 230.
cf. ante, p. 66.

These points being established, I may now refer to the *dictum* of Lord Russell, C.J., on the question, in *re Galwey*. The point, it will be remembered, was whether a subject could be surrendered to Belgium under the treaty.

"The learned counsel contends that in the present case the prisoner was not so liable. It seems to me, however, that he clearly was. One may conceive the case of a Secretary of State being applied to in a given case, in which it was notorious that the person against whom the application was made was a British subject; and further, that the circumstances under which he was charged with having committed a crime were such that, in the clear opinion of the Secretary of State the Executive Government ought not to assent to his extradition and ought not to exercise that power which the treaty and the Act conjointly give; in such a case it clearly would be within his competence to say, 'I shall not assist the extradition of this particular alleged criminal.'"

It had been argued that there should be an express assent in each case of a subject surrendered. The Court did not agree.

but held that the issue of the order to the magistrate is the indication, and the only necessary indication, of the acquiescence of the Secretary of State to the extradition proceedings being started. But then, if the assent has been given, it may equally on good cause be withdrawn.

Chap. III.
Sec. V.

“I do not for one moment mean to convey that the Secretary of State, having given that order to the chief magistrate, may not, when at a later stage he becomes more fully aware of the facts of the case withdraw that assent, and interpose even at a later stage and say that it is not a case in which the Executive Government think that extradition ought to be granted; nay, more, I am far from saying that at any moment before the accused is handed over to the foreign Government it is not perfectly open to those representing him to make representations to the Crown if reasons exist why his surrender should not be granted. All these however are matters of political complexion; they are not matters which in any way enter into the duty of the judiciary to determine.”

One word of caution is necessary with regard to this judgment. It might appear to suggest that the Secretary of State has a general power of refusal to surrender, which he may exercise at any time. But it is manifestly limited to those cases in which he may or must refuse it; and in the opinion of the Court, he may decide on the action he will take at any time, even at the last moment. A refusal must involve the cancellation of warrants already issued, as explained above.

We have now arrived at the point when the order is sent to the magistrate by the Secretary of State, requiring him to issue his warrant for the apprehension of the fugitive. We must now see what the duty of the magistrate is on receipt of the order.

Section 8.

On receipt of the order the magistrate, by s. 8 (1), is required to issue a warrant for the apprehension of the fugitive, on such evidence being put before him “as would in his opinion justify the issue of the warrant if the crime had been committed or the criminal convicted in England.”

At this preliminary stage of the proceedings the keynote to the whole scheme of extradition is struck: the complete subjection of it at every step to the law and procedure of England. In view of the reason which has been given, and it is the only reason which could be given, that the introduction of the tests

Procedure
subjected to
English law and
warrant-
procedure.

Chap. III.
Sec. V.

of the English criminal law is a matter of convenience and necessity, and that any other scheme which the science of criminal law might point to must be discarded as unworkable, it will be useful to take stock of the position as it stands at this point. In spite of the regard which must be paid to official statements of foreign Governments, in spite too of the probability that the foreign Government has only made the requisition on the advice of its responsible advisers, it would be impossible for the English Executive to be empowered to act on it without more; and there are questions which the English Law Officers could not be expected to solve. But taking even so simple a matter as the identity of the fugitive, which some of the treaties refer to, but which the Act does not, the machinery for extradition requires the assistance of subordinate officers; and in the carrying out of the preliminary steps mistakes may be made. It is therefore inevitable that recourse should be had to the Judiciary. The question of identity is, it is true, not likely to arise till after the arrest, but it is an apt illustration of the necessity for a reference to the police magistrate; and it is obvious that the matter should be put into his hands from the first. But directly the magistrate is introduced, unless a complete new procedure were devised, it is inevitable that the English procedure for issuing the necessary warrant should be resorted to; and the simplest and only reasonable method by which this can be done is to imagine the offence to have been committed in England, and to authorise the magistrate to act accordingly. Therefore the warrant is only to be issued in the same way, and for the same reason, as a warrant for an offence committed in England.

Necessity for
imagining
offence to have
been committed
in England.

Where the fugitive is either accused or has been convicted, sub-sec. (1) requires "evidence": that is, evidence of the commission of the crime, or of the fact of the conviction. The question as to what amount of evidence ought to be required by the magistrate has, however, only been considered under the summary procedure, in which the position of affairs is entirely different; but it will be convenient to consider the different points which arise in connexion with that question.

Summary procedure by way of direct application to the Magistrate.

But the formalities involved in proceeding by way of requisition to the Secretary of State involve delay, might facilitate the prisoner's escape, and might otherwise be so ineffective in many

cases as to be practically useless. The Act has therefore introduced a summary procedure, by which the magistrate may be applied to direct for the issue of a warrant; and this may be made not only to a police magistrate, [*i.e.*, by s. 26, "a chief magistrate of the metropolitan Police Courts, or one of the other magistrates of the metropolitan Police Court in Bow Street"] but also to any justice of the peace in any part of the United Kingdom, which, also by s. 26, includes in Scotland, "any sheriff, sheriff's substitute, or magistrate."

Chap. III.
Sec. V.

The summary
warrant before
requisition.

Sub-sec. (2) of s. 8 provides that the warrant may be issued—

on such information or complaint and such evidence or after such proceedings as would in the opinion of the person issuing the warrant justify the issue of a warrant if the crime had been committed or the criminal convicted in that part of the United Kingdom in which he exercises jurisdiction.

It is important to notice that no conditions are attached to the use of the summary procedure; that is left entirely to the discretion of the foreign Government, for the proceedings are presumably intended to be taken by the foreign Government, or at least on its instructions. Possibly they may also be taken by the party aggrieved; if this is so it is the only point at which the individual can appear in the proceedings, for after the summary warrant has been issued, the proceedings cannot go on without the requisition from the foreign Government. The point of the summary procedure is, however, that it may be resorted to before the requisition is sent over to England. The foreign Government has not acted, but only intends to act. It would not seem even to be necessary for a warrant to have been issued at the time in the foreign country; the Act allows the crime to be treated as if it had been committed in England.

The warrant issued by the magistrate is often called a "provisional warrant;" but this is a misleading expression, and I have used the term "summary warrant," as it is the result of the summary procedure.

It will be noticed that the language indicating the two procedures to be followed is not identical. Where the order has been received by the magistrate from the Secretary of State, "such evidence, &c.," only is required for the warrant to issue; but where the initial application is direct to the magistrate, the warrant is to issue "on such information or complaint and such evidence or after such proceedings, &c." It is a little difficult

Chap. III.
Sec. V.

Evidence
necessary for
summary
warrant to
issue.

to explain the precise difference between the two requirements; but this may be suggested: that the order from the Secretary of State stands in lieu of the technical "information or complaint;" but beyond that "evidence," that is, evidence on oath, is required. Were it not for the fact that the proceedings are assimilated to the English proceedings for obtaining a warrant, it might be contended that a *prima facie* case of guilt must be made out in both cases at this initial stage; but this cannot be so, for it would be contrary to the spirit of the Act. On the other hand, it makes it abundantly clear that the mere fact that the foreign Government has issued a warrant is insufficient. But "information" is not really a technical word, though it has come to be regarded as such; it implies that some information on oath about the crime alleged to have been committed is to be given to the magistrate.

R. v. Weil,
9 Q.B.D. 701.

The question therefore resolves itself, as in an English case, to the question how much evidence is required. Jessel, M.R., said in *R. v. Weil*, that it must be sufficient in the opinion of the person issuing the warrant; that it is a question of judicial discretion:—"There must be some evidence, but very little will do, for it is merely for the purpose of detaining the man."

The word "complaint" in its technical sense, which is the preliminary to getting an order, and not a warrant, from the magistrate, and is thus distinguished from an "information," is not appropriate to the subject.

Convicted
persons.

Where the fugitive has been convicted, the use of the word "evidence" would apparently allow the magistrate to be satisfied with proof of the foreign conviction, in the way prescribed by s. 15; and in the long form of treaty, special provision is made for dealing with convicted persons. But the Act is not very clear. The magistrate is to issue his warrant on such information and evidence, &c., as would justify the issue of the warrant if the criminal had been convicted in England. If this means that the magistrate is to issue the warrant which he would issue if the criminal had been convicted in England, it would be a warrant for prison-breach, a distinct offence by English law. The law of escape is somewhat recondite, but it cannot have been intended to assimilate the proceedings on extradition after conviction abroad, to the English law of escape. The only other meaning is that the magistrate is to issue the same warrant which he would issue after having convicted a prisoner, that is to say, a warrant for committal to prison; but the way in which the section is worded is hardly appropriate to this con-

struction. It would appear as if the method adopted throughout the Act, of combining persons convicted with persons accused required more consideration. The clause in the treaties referred to above, is, however, quite clear. The magistrate is to issue his warrant on evidence; but in the case of a person convicted, the evidence to be produced "shall be such as would, according to the law of England, prove that the person was convicted of the crime charged." The effect of this is simply to recognise the foreign conviction, and to authorise the issue of the warrant, for arrest or surrender, accordingly.

Chap. III.
Sec. V.

The summary warrant is for apprehension only, and there is nothing in the section giving the magistrate or justice of the peace any discretion as to its issue on the ground of the alleged offence being of a political character or not being an extradition crime. Were it not for the fact that these questions are expressly referred to, the former in s. 3 (1), and both in s. 9, in connexion with the hearing, it would have seemed fairly clear that the magistrate has this power at this early stage, at leasts when he acts without the order of the Secretary of State. But the fact that his right to receive evidence on these points is specially created by s. 9, tends to shew that he has no such right in the preliminary stages; and, as we shall presently see, his powers, even at the hearing, in this respect are very limited.

Warrant issued
on facts alone.

After the warrant is issued a report is to be sent forthwith to a Secretary of State, together with the evidence and information or complaint (or certified copies thereof), "who may, if he think fit, order the warrant to be cancelled, and the person who has been apprehended on the warrant to be discharged". The introduction of a discretionary power in the Secretary of State at this stage, without any limitation or direction as to its exercise, raises the question of some difficulty, whether the Secretary of State may review the decision. The general grounds on which, and the reasons why, he may exercise his discretion on the report have already been indicated. But the words are capable of a wider construction, and seem to imply a right to review the decision where a summary warrant has been issued. The question is obviously an important one, and arises in two ways. First, if the magistrate or justice of the peace issues a summary warrant, can the Secretary of State in addition to the cases in which he must or may do so, which have already been considered, review the decision on the facts; and, his advisers coming to the conclusion that the evidence did not justify the issue of the warrant,

Report of issue
to Secretary of
State;

how far he may
review decision.
cf. p. 81.

Chap. III.
Sec. V.

can he order it to be cancelled and the person apprehended to be discharged? The words of the paragraph are undoubtedly wide enough to include this power; but where this summary procedure has been sanctioned by treaty, as it often is, it would seem that the foreign Government would have a just cause of complaint if the decision of the magistrate or justice to issue the warrant were not accepted by our Government.

Remedy where
warrant refused.

Secondly, if the magistrate or justice refuses to issue the summary warrant, is the applicant precluded from making a fresh application? or can the Secretary of State when the requisition is to hand, ignore the decision, and issue an order to another magistrate? This point lies outside the express words of this paragraph of s. 8, for they only deal with the case of the warrant having been granted; it raises the question generally of the right of the Secretary of State to review the magistrate's decision, and this applies also to the case of a refusal of the magistrate to issue a warrant after the Secretary of State's order on the requisition has been issued to him. I have already suggested that the refusal of the magistrate to issue a warrant is no bar to a fresh application being made on fresh evidence; but the point now arises whether a second application can be made to another magistrate on the same evidence, or whether there is any other remedy. The points involved are of considerable complexity, and I shall do no more than suggest them. It is doubtful whether the plea of *res judicata* could be set up where there has been a refusal to issue a warrant; certainly the plea of *autrefois acquit* could not, for there has been no acquittal. There might possibly be a case of refusal to adjudicate within the meaning of the decision in *R. v. Adamson*, if the magistrate had declined to issue the warrant owing to some extraneous knowledge or belief, and a *mandamus* might issue in such a case; but not otherwise, for it is a question of judicial discretion, with the exercise of which the Courts will not interfere. But this involves the important question, what facts the magistrate may go into. Suppose for example, he went into the question of the prisoner's nationality, and that, on the true reading of the Act, he has not the right to consider it; or if, from his own knowledge, he held that the offence charged was one of a political character, and that, on the true reading of s. 9, he cannot do this on the issue of the summary warrant; then it would seem as if a case within the decision referred to would be made out, and a *mandamus* might issue. But there is another question. Could the Secretary of State

R. v. Adamson.
1 Q.B.D. 201.

cf. p. 77.

remonstrate with the magistrate? The independence of the Judiciary from the Executive is fundamental to our system; but then that difference between extradition and the ordinary administration of the criminal law comes up, and suggests the possibility that the administration of the procedure to carry out treaties such as those of extradition, might be viewed from a somewhat different standpoint. But the special feature of proceedings under the Act is that the order of the Secretary of State is to be issued to the chief or one of the other magistrates of Bow Street; and if one magistrate declined to issue the warrant, it would be hardly possible for a fresh order to be issued to another. But in the case of the issue of the summary warrant, the point I have suggested is not at all far-fetched; for a justice of the peace might consider evidence insufficient which a highly trained magistrate might consider sufficient.

Chap. III.
Sec. V.

The fugitive having been apprehended, he is then to be brought before "some person having power to issue a warrant under this section" [s. 8]. This section works out in practice in the following way. If the warrant has been issued by a justice of the peace, when the fugitive is arrested he will be taken to the nearest justice, the warrant having been endorsed if necessary, unless he is arrested in London, when he will be taken to a police magistrate; or if the warrant has been issued by a police magistrate in London, and it is executed in the country under s. 13, the fugitive will be taken to the nearest justice; then, if on his arrest he is taken before a justice, this second warrant orders him to be brought before a police magistrate in London who will hear the case. Its issue is purely ministerial, and no question of evidence arises. If the arrest is in London no second warrant is required, because the prisoner is already before a police magistrate.

The second
warrant for
conduct to
police magistrate.

The point to be noted is that justices of the peace throughout the United Kingdom may exercise the preliminary jurisdiction of issuing a warrant of apprehension, which is indorsed by another justice in the county where it is executed; but that afterwards the jurisdiction is centred in London in respect of fugitives arrested in any part of the kingdom, the ultimate order for surrender emanating from the Secretary of State in Downing Street.

After the apprehension, a pause occurs in the proceedings, in order that the summary procedure may be brought into line with the normal procedure. Time has been saved, and the fugitive's

Chap. III.
Sec. V.

Requisition
after issue of
warrant essential.

further escape from justice prevented. All that comity could require has been provided for; but now the requisition from the foreign country must be forthcoming; without it the proceedings must be abandoned, for they ought never to have been begun, and the magistrate must within a certain time discharge the prisoner. Extradition at the request of a private party is unknown; and it is just this necessity for a subsequent ratification by the Government that makes it doubtful whether the preliminary summary proceedings can be, or at least ought to be, resorted to by private individuals without the authority of their Governments. For ultimately the foreign Government may refuse to proceed, or may think the case one in which extradition should not or could not have been applied for; or private spite may have actuated the application to the magistrate.

Fundamental principles are clearly in issue here, and an examination of the question is rendered necessary by the decision and the opinions expressed in *R. v. Weil*.

R. v. Weil,
3 Q.B.D. 701.

The prisoner was arrested on board a steamer in Queenstown harbour, on a charge of forgery at New York, without a warrant. The only information in the possession of the police was a telegram from a private enquiry agent in London, stating that he had received a cable from a private detective office in New York informing him that the prisoner had been indicted there. The magistrate at Queenstown committed the prisoner by warrant for further examination, and reported the arrest to the Secretary of State. A further warrant was then issued for the conveyance of the prisoner to London. There were several remands, Sir James Ingham reporting the matter afresh to the Secretary of State, who subsequently issued his order to the magistrate informing him that a requisition had been received from the United States ambassador, and requiring him to proceed in conformity with the Extradition Act. Sir James Ingham was of opinion that the error, if any, [*i.e.* the absence of any warrant] was rectified by this order, and he issued a fresh warrant for the prisoner's apprehension. The Queen's Bench Division refused the application for a *habeas corpus*, and the matter was taken to the Court of Appeal. The Court doubted whether there was any appeal jurisdiction; but they assumed it, because they thought that the objection was not of such weight as to justify interference by *habeas corpus*. The man having been already in custody, it was argued that the warrant issued by the Irish magistrate was not a "warrant for

apprehension"; but Jessel, M.R., thought the objection was too narrow, because to "apprehend" a man only "means the taking hold of him and detaining him with a view to his ultimate surrender," and this may be done although he is already in custody; otherwise he would have to be restored to liberty first. Brett, L.J., dealt with the proceedings in London; he said, that if the man "was already wrongfully in custody and there was proper evidence to justify his apprehension, Sir James Ingham was justified in issuing a warrant for his detention. If there was any irregularity it was in the original arrest. But that is immaterial, when the subsequent proceedings have been right." Cotton L.J., contented himself with saying that the Irish warrant was sufficient for apprehension within the meaning of the Act.

Chap. III.
Sec. V.

The point of this decision lies in its application, because it would seem to lay down the doctrine that wrong procedure in the arrest of a person may be subsequently set right, so long as the man is got hold of; and so long as the subsequent proceedings are regular the wrongfulness of the preliminary proceedings is immaterial. But Brett, L.J., went further, doubting even the irregularity. "I doubt much," he said, "whether a policeman is not justified in arresting a man without a warrant on reasonable grounds of suspicion of his having done that which would be a felony if committed in this country." This seems to set at nought the fundamental principles on which extradition rests, for it denies the common law right to be at liberty if no offence against the law of England has been committed. The Extradition Act provides the only way in which that right may be broken in upon; where the offence alleged has been committed against a foreign law, if there is no requisition by a foreign Government, a person may only be arrested by warrant of apprehension issued by a magistrate or justice on sufficient evidence laid before him. Here the arrest took place first, the warrant at best ratified it; and of course the magistrate has no discretion, nor could he refuse the warrant on account of the illegality of the arrest. But I venture, with much respect, to say, that the Court in approving this arrest was laying down a most dangerous doctrine. If the policeman had acted at the request of the United States Ambassador, or Consul-General, who to save time had passed by the regularities which the Act prescribed, the arrest would still, it is submitted, have been illegal, though perhaps it might more justifiably have been condoned. But the whole case depended on private detective offices, and information derived from cables.

Arrest by a
policeman
without warrant.

Chap. III.
Sec. V.

Sattler's case.
cf. ante, p. 35.

How far
irregularities
may be put
straight.

R. v. Weil.
9 Q.B.D. 701.

It seems to put too much power in the hands of such unrecognised detectives. But what remedy the man had is another matter; for the doctrine of *Sattler's case* would apply; he was before the Court, and whether it is for trial or for surrender, is immaterial: the Court must act. Yet there can be very little doubt that if an application for *habeas corpus* could be made in such a case before the application to the magistrate, the person arrested would be set at liberty. And then this question arises, whether the magistrate could issue a warrant intended to put the proceedings straight pending the hearing of the *habeas corpus*. And then this further question arises, to which I have before alluded, how much irregularity will the Court be disposed to pass by. These are important questions not yet solved; and I venture to think that the decision of the Court in *R. v. Weil*, will not prevent them being reconsidered on occasion arising.

This question is most carefully dealt with in the treaty with Switzerland, which in art. III, provides that requisitions for the summary warrant "may be addressed by post or telegraph, provided they purport to be sent by some judicial or other competent authority." The question already put may be repeated with reference to this provision; could such an arrest as occurred in *R. v. Weil*, take place in the case of a fugitive from Switzerland; or if it did, the treaty being overlooked, would the Court disregard it?

It must be noticed here, although the consideration of the point must be deferred for the present, that the summary procedure by magistrate's warrant is not included in all the treaties.

exp. Terraz.
4 Ex. D. 63.

The nature of the summary proceedings was explained, more especially with regard to the form of the warrant, in *ex parte Terraz*, in 1878. The prisoner was accused of "the commission of crimes against the bankruptcy law" in Switzerland, and the magistrate issued his warrant. While he was under remand, a rule *nisi* was obtained on the ground that the warrant did not sufficiently set forth the nature of the offence. Before the case was argued the Home Secretary issued his order to the magistrate, specifying the offence as "fraudulent bankruptcy;" and a fresh warrant was issued stating the offence with great particularity. On the hearing of the *habeas corpus* the Court confined itself to the first warrant, holding it sufficient, if it indicated broadly the nature of the crime alleged to have been committed. Kelly, C.B., based himself on the consideration that the Act was drawn in a practical manner, permitting a comprehensive mode of des-

cription, and enabling the fugitive to be brought up by general words of warrant, because it might be difficult to frame the charge accurately with sufficient promptness to allow the proceedings to be taken, and he applied to extradition proceeding, the principle laid down by Lord Tenterden in *R. v. Krans*; where in a case "there must be further enquiry which requires the continued imprisonment of the party charged, if a *habeas corpus* be obtained, he is not to be discharged, but should be remanded for the purpose of the further enquiry before a competent authority, in order that he may either be put upon his trial or discharged, according to the result of the enquiry." Huddleston, B., said that warrants in execution required considerable strictness, because on *habeas corpus* the Court had only the warrant to judge by whether a crime had been committed and whether the criminal was properly held in custody; but that warrants for apprehension were governed by a different rule; they were not directed to the prisoner but to the officer for his protection, and to enable him to take the person into custody for the purpose of enquiry, or of holding him while the enquiry was pending, or of keeping him in safe custody.

It can hardly be said that the Court approved the procedure which had been adopted for putting things straight, for the Judges confined themselves strictly to the proceedings on the first warrant, and held that they were straight from the beginning. But the decision covers several of the preliminary documents; and the rule may be taken to be, that general words of warrant only are required in the Secretary of State's order and in the Magistrate's warrant for apprehension, in the magistrate's summary warrant, or in the second warrant for safe custody to the police magistrate, so long as they indicate with sufficient clearness that a crime within the treaty has been committed.

If a requisition is not received from the Secretary of State within such reasonable time as the magistrate may determine, having regard to the circumstances of the case, the fugitive is to be discharged. Where the summary procedure is recognised by the treaties, this time is specially fixed; 30 days is a very usual time, but in the case of Peru it is 90 days.

Chap. III.
Sec. V.

R. v. Krans.
1 B. & C. 258.

Strictness not
required in
summary
warrant.

Requisition to
be received in
reasonable
time after issue
of warrant.

SECTION VI.

The Hearing.

The two forms of procedure for obtaining the arrest the fugitive having now been put on the common basis of the requisition, the case is ripe for hearing. It has been legally brought within the Bow Street jurisdiction; and by s. 9, it is provided that the magistrate "shall hear the case in the same manner, and have the same jurisdiction and powers, as near as may be, as if the prisoner were brought before him charged with an indictable offence committed in England."

*Section 9 (first paragraph).**Remand and Bail.*

Power of
magistrate
to remand.

The powers given to the magistrate under this section include the power to remand from time to time, which is obviously very important in the case of evidence coming from abroad. But whether they also include the right to admit the prisoner to bail is a difficult question not yet authoritatively decided. A difference in the drafting of the corresponding section of the Fugitive Offenders Act, 1881, s. 5, may be at once noticed. There the same language is used; but after the words "as near as may be," the following parenthesis is added—" (including the power to remand and admit to bail)." No reliable argument can be based on this difference between the two Acts; for while it may be said, on the one hand, that the express reference to bail in the Act of 1881 shows that it was deliberately excluded from the Act of 1870, it may also be argued that it was put into the later Act in order to prevent the same point arising as had arisen under the earlier Act, and therefore does not clear up the doubt under that Act.

44 & 45 Vict.
c. 69.

Bail.

In the absence of express decision we may look at the question from several different points of view. *A priori*, it seems absurd to suppose that a man arrested under a special provision of the law dealing with his escape from justice in another country, should be allowed another chance of escape. Theoretically bail is not a chance of escape; the prisoner is entrusted to the private custody of persons called his bail, and the acknow-

ledgement of indebtedness in the bond is supposed to be sufficient to ensure his not escaping. In so far as bail is a question of discretion, the fact that a man has escaped once would be sufficient ground for refusing it; and even supposing the principle of bail to be included in extradition procedure, this in itself would be sufficient ground for refusing it in all cases, the whole procedure being devised in order to prevent further escape. If the power exists, we must, therefore, at once apply Lord Russell's view in the case of an application under the Fugitive Offenders Act, that it must be exercised with extreme caution.

Chap. III.
Sec. VI.

Looking at the matter from the point of view of the common law, bail is not *habeas corpus*, and is not protective of liberty. Without going too deeply into the matter it can only be looked on as an incident in our criminal procedure: that is to say, in the procedure established by the law for the trial of offences against the law. But extradition is not a procedure based on a breach of our law. Moreover, the law as to bail is inappropriate. In *re Frost*, the Judges said that in all cases of misdemeanours bail must be granted, but that its refusal was discretionary in cases of felony; obviously this rule could not be applied to extradition. It would seem, therefore, that at common law there can be no power to admit to bail, and that if the magistrate has power to admit a fugitive to bail, it must be derived from the words of the Act. It is difficult to contend that it does not fall within the "jurisdiction and powers" which are given to the magistrate in connexion with the hearing of the case, and the treaties practically accept the principle of reference to English law and procedure on which our Act is based. The only loophole is in the words "as near as may be." Now, on the face of it, it would seem to be a breach of the treaty to allow this departure to be made from the ordinary procedure in the case of persons charged with an offence against English law.

re Frost.
4 T.L.R. 757.

But if we turn to s. 10, it seems clear that if there is a power to admit to bail, it can only exist in connexion with remands; for that section provides that the magistrate is to commit the fugitive to prison in certain eventualities; and it has been pointed out that in s. 25 of the Indictable Offences Act, 1848, which defines the jurisdiction and powers of the magistrate in an English case, the words used are "commit him to prison or admit him to bail." Any reference to this Act must therefore cease at the moment of committal; for at this point all analogy, or intention to create an analogy, between extradition and

cf. Byron & Chalmers, p. 50.
11 & 12 Vict.
c. 42.

Chap. III.
Sec. VI.

Analogy with
ordinary English
procedure ceases
after committal
for surrender.

ordinary cases ceases; for it is a committal for surrender that is made under the Act and not a committal for trial, and the whole tenor of the subsequent proceedings shows that to admit to bail would be inconsistent with it. But even assuming it to be limited to remands during the hearing, on the whole I am inclined to think that bail is inconsistent with the treaties, and that s. 9 is not sufficient to compel the English rule with regard to it to be applied to a fugitive criminal.

R. v. Spilsbury,
1898, 1 Q.B. 615.

cf. p. 94.

cf. Chap. VIII.

This conclusion does not agree with the opinion expressed by Lord Russell, C.J., in *R. v. Spilsbury*. That was a case under the Fugitive Offenders Act; but quite apart from the difference in the language of the two Acts noticed above, the cases at bottom should rest on the same principle. The question in the case was whether the fugitive could be admitted to bail after the warrant for his "return" (or surrender) had been issued. The learned Chief Justice said that the Court of King's Bench had a common law jurisdiction to admit to bail; therefore the question was whether the Act had taken it away, and the prisoner was not bound to show that the Act had granted it. In that case bail was refused on the ground that the prisoner could be returned immediately, and this remark applies with equal force to extradition; but it does not touch the subject of bail on remand. The question must be left with this statement of the points which occur to me, pending a definite decision by the Courts.

Evidence taken abroad.

Where a crime has been committed abroad the witnesses will be abroad; and although very little evidence is required for the issue of the warrant of apprehension, when it comes to the hearing the witnesses must, in normal circumstances, come to England to give their evidence. But provision has been made for the reception at the hearing of evidence taken in the country where the crime was committed.

Proof of foreign
documents and
depositions.

By s. 14, it is provided that—

Depositions or statements on oath, taken in a foreign State, and copies of such original depositions or statements, and foreign certificates of or judicial documents stating the fact of conviction, may if duly authenticated, be received in evidence in proceedings under this Act.

Further, s. 15 provides the alternative methods of authentication of the different kinds of documents which may be used in

the proceedings. This includes warrants, in addition to the documents referred to in s. 14.

Chap. III.
Sec. VI.

A warrant is to be signed by an officer of the foreign State where it was issued: Authentication of documents.

A deposition or statement, or copy thereof, is to be certified under the hand of an officer of the State where it was taken, to be the original or a true copy, as the case may require:

A certificate of conviction, or the judicial document stating the fact of conviction, is to be certified by an officer of the State where the conviction took place;

and in the case of each of these documents, it is to be authenticated by the oath of some witness, or by being sealed with the official seal of the Minister of Justice or some other Minister of State.

All Courts, justices and magistrates, are to take judicial notice of such official seal, and to admit the document so authenticated by it in evidence without further proof. The authentication guarantees that the signature or certificate is what it purports to be.

The word "officer" used above, includes Judge and magistrate.

The point which somewhat confuses the clear appreciation of these provisions is that two classes of documents are grouped together; those which must be produced—the warrant which has been issued for the arrest of the fugitive abroad, and the certificate of conviction, in the case of a fugitive who has been convicted; and those which may be produced, depositions already taken in the proceedings abroad. This being so, it is difficult to treat the word "may" in s. 14 as discretionary; and even if it were so, there is no indication as to how such a discretion is to be exercised, whether it is to be limited to cases in which depositions by absent witnesses may be received in England. Moreover, it is not clear whether it is right to limit the depositions which may be received to those which have already been taken, except for the fact that the English Court is seised with the case, and it might be contended that evidence would then only be receivable according to English rules. As the section stands, depositions subsequently taken would appear to be receivable.

Two classes of documents referred to in ss. 14 and 15.

But the admission of depositions and statements on oath made in a foreign country implies the admission of statements made according to the law of evidence prevailing in the foreign country, although the principles of that evidence may differ radically from Admission of foreign depositions involves recognition of

Chap. III.
Sec. VI.

foreign law of
evidence.

re Counhaye.
L.R. 8 Q.B. 410.

Effect of foreign
depositions.

those on which our law of evidence is based. The extent to which this might go is illustrated by *re Counhaye*, where depositions which had not been taken in the presence of the accused were admitted by the magistrate. Blackburn, J., said that the foreign depositions if they are authenticated, become evidence "whether taken in the presence of the person charged or not. In most European States, I believe, it is not the practice to take the depositions in the presence of the accused; at all events the law is indifferent in the matter."

R. v. Zossenheim.
20 T.L.R. 121.

In a recent case *R. v. Zossenheim*, the prisoner was charged in 1903, with obtaining goods by false pretences in Germany in 1896; and evidence taken there in his absence in 1899 was put in; there was no fresh evidence. Lord Alverstone, C.J., said,— "Foreign depositions ought to be most strictly scrutinised. The magistrate ought to see what the substance of them was, as establishing the facts of the case; but to say that if the statements in the depositions did establish the facts, the magistrate should then enquire whether certain formalities according to English law had been taken, was contrary to s. 14 of the Act."

These two cases go far to establish the rule that the reception of foreign depositions is compulsory on the magistrate, whatever their nature may be. Blackburn, J., went to the extent of saying that he thought that they would also be evidence, "whether taken in the particular charge or not." The learned Judge, however, qualified his statement by saying that it was for the magistrate to give what weight he thought fit to depositions or evidence taken in a manner not recognised by English law. This opens a large field of enquiry; but it depends somewhat on the provisions of s. 10, which must next be examined.

Section 10, and Section 9 (second paragraph).

Section 10 governs the hearing of the case, defines the nature of the evidence which the magistrate may receive, and his action with regard to the prisoner at the close of the hearing. It is the most important section of the Act, because it lays down definitely the position which English law holds in the law of extradition. It runs as follows:—

Rule as to
evidence to
be taken at
hearing.

In the case of a fugitive criminal accused of an extradition crime—
if the foreign warrant authorising the arrest of such criminal is duly authenticated,

and such evidence is produced as (subject to the provisions of this Act) would, according to the law of England, justify the committal for trial of the prisoner if the crime of which he is accused had been committed in England, the police magistrate shall commit him to prison, but otherwise shall order him to be discharged.

Chap. III.
Sec. VI.

In the case of a fugitive criminal alleged to have been convicted of an extradition crime—
if such evidence is produced as (subject to the provisions of this Act) would, according to the law of England, prove that the prisoner was convicted of such crime, the police magistrate shall commit him to prison, but otherwise shall order him to be discharged.

If the prisoner is committed to prison, he is to be committed to the Middlesex House of Detention, or to some other prison in Middlesex, there to await the Secretary of State's warrant for his surrender.

The magistrate is then required forthwith to send to the Secretary of State a certificate of the committal, and such report upon the case as he may think fit.

Evidence.

The section raises many points of difficulty, but it will be convenient first to consider more fully the *dicta* of Blackburn, J., in *re Counhaye*, with regard to evidence from abroad.

re Counhaye,
L.R. 8 Q.B. 410.

First, as to the construction of s. 14, apart from the two decisions above referred to. The difficulty in regard to the use of the word "may" has been pointed out; but in so far as documents are concerned, such as depositions, as to which it is possible that it is not compulsory, it does not seem to be an improbable construction to say that they are to be admissible according to the English law of evidence. We must therefore see whether this is consistent with s. 10. This section provides that the evidence to justify a committal for surrender must be "such evidence as would, according to the law of England," justify committal for trial. The normal meaning of this is that the magistrate is to come to his conclusion as to committal or discharge according to the law of England: he is to commit if there is a *prima facie* case of guilt.

Committal to
be justified by
English law.

But there is another implication in the words; that the evidence itself is to be such as would, according to the law of England,

Evidence to
justify committal
by English law.

Chap. III.
Sec. VI.

justify committal for trial. If the matter stood there, there would be no doubt that foreign depositions would only be receivable according to the English rules of evidence. But the sentence runs, "and such evidence is produced as (subject to the provisions of this Act) would, according to the law of England, justify the committal for trial, &c." The parenthesis is, I think, clearly intended as a reference to s. 14; and therefore the construction of the two sections, on which the learned Judges did not dwell, supports the views expressed in the judgments, as to evidence taken in the absence of the accused. And *a priori* considerations lead to the same conclusion. For the offence has been committed in the foreign country; that country has complete jurisdiction over it, and it may be proved, so long as the prisoner is subject to its Courts, in the way and by such evidence as its laws allow. But it is obvious that when the case comes for extradition before the English Courts, they can only act on their own procedure, and not on the foreign law of evidence, about which they know nothing. They act in aid, but only so far as their own rules of procedure allow them. If, however, the proceedings abroad have advanced to a certain stage, and evidence has already been collected, there seems to be no reason why that evidence should not be received, and the English Courts take up the thread of proof at the point at which the prisoner's escape has broken it off. It may not unreasonably be argued that it was for this express reason that evidence taken abroad was made admissible by s. 14, and that this is a deliberate departure from the fundamental rule that the proceedings are to be governed by English law. There is, however, a difficulty in connexion with the suggestion that the magistrate is to give what weight he thinks fit to evidence from abroad which does not conform to English standards. If this were so, when the fugitive is a British subject and liable to be surrendered, he would naturally be inclined to reject evidence obtained by means of a procedure altogether foreign to our ideas of justice. The result might be to defeat the object with which extradition proceedings are instituted; for if a British subject in a foreign country offends against its laws, he must take the consequences of his acts; and these may include not only a heavier penalty than he would suffer had he committed the crime in England, and a form of punishment unknown to English law, but also a more drastic method of proving the case which the laws of that country sanction.

A priori reasons
why foreign
depositions
receivable in
evidence.

The second paragraph of s. 9, also deals with the evidence at the hearing. It provides that the magistrate may receive evidence to show that the crime of which the prisoner is accused or convicted is an offence of a political character, or is not an extradition crime.

Chap. III.
Sec. VI.

Evidence
receivable by
magistrate.

It will be noticed that this provision is limited in two ways; first, in the matter of reception of evidence, it refers to two special heads only; secondly, it goes no further than the reception of evidence, and does not expressly give the magistrate power to discharge the fugitive on that evidence.

The above paragraph is supplemented by the provision of s. 3 (1), that the prisoner may prove to the satisfaction of the magistrate,—that is, that he may receive evidence tendered by the prisoner to show—“that the requisition for his surrender has in fact been made with a view to try or punish him for an offence of a political character.” The magistrate must say whether he is satisfied or not: in other words, he must express an opinion on this evidence; but, as in the case of s. 9, no power is expressly given to the magistrate to discharge the prisoner if he is satisfied on this point. The sub-section says “he shall not be surrendered;” but that, as already pointed out, is an instruction to the executive officers. For the purpose of this discussion it is immaterial whether the two parts of s. 3 (1) refer to the same thing or not.

cf. p. 46.

cf. p. 47.

The first question which arises under the second paragraph of s. 9 is whether it exhausts all the limitations to the reception of evidence at the hearing. There is one important point, which is referred to in many treaties, the identity of the prisoner with the person charged abroad, as to which it seems incontestable that the magistrate can receive evidence, although there is no special reference to it in the Act. For, adopting the construction of s. 10 suggested above, that the evidence and the committal are to be governed in all things by the law of England; and referring also to s. 9, which requires the case to be heard as if it were an English case, it follows that everything which could be proved in an English case must be receivable evidence in an extradition case, and may go to influence the magistrate's decision as to committing or discharging the prisoner. The reason for the introduction of the special provision as to evidence in the second paragraph of s. 9, seems, therefore, to be that the matters dealt with in it lie outside the purview of an English case; evidence would not be admissible on those points, simply because those questions could not arise.

Identity of
prisoner.

cf. p. 99.

Chap. III.
Sec. VI.

The same argument applies to the evidence tendered under s. 3 (1).

Nationality of
prisoner.

But there is a still more important omission—the nationality of the fugitive; and this is not accounted for satisfactorily by the above explanation of this special provision. For, in an ordinary English case, the magistrate would not receive evidence of the prisoner's nationality, except in cases where the jurisdiction of the English Courts under some special Act may depend on it; as, for example, in a prosecution under the Explosive Substances Act, 1883. Otherwise, if the offence is shewn to have been committed in England, the nationality of the prisoner is immaterial. But the question of the fugitive's nationality does not arise under the Extradition Act, for subjects are not mentioned in it; they are included within its general terms, but their surrender or non-surrender depends on the treaty, and the magistrate has no express jurisdiction under the Act to look at or base his decision on the treaty. If he has jurisdiction to take evidence on this point it arises in a somewhat circuitous way, and inferentially from the definition of extradition crime: a crime in the schedule committed by a person liable to be extradited. And subjects are not liable to be surrendered under some treaties.

46 *Vict. c. 3.*
cf. ante, p. 64.

cf. p. 64.

The locality of
the crime.

cf. R. v. Nillins
ante, p. 70.

The same remarks apply to the equally important point whether the crime was committed in the requesting country, for on this the whole question of the surrender may depend. We have already seen that cases may arise in which the locality of the crime may involve legal points of difficulty; but it may be a simple question of fact, as in such a case as this. Assume the German law of murder to apply to subjects abroad; and a German who had committed a murder in France to have escaped to England. The surrender to Germany would be refused, because the agreement to surrender is limited to offences committed in the territories of the two countries, and is not extended generally to offences against their laws. In the hearing of such a case the facts would come out naturally, and there would be no question of the magistrate's deliberately receiving evidence on the point; but can he base his decision upon it? In such a case, if it were also murder or manslaughter by the French law, a requisition would probably be made by France.

Again, where the whole of a country's criminal law is applied to its nationals abroad, it might well be that the offence for

which the fugitive's surrender is asked by Germany, for example, might not be an offence against the law of France where it was committed. Then the surrender would be refused, not only to Germany, but also to France. I have suggested complicated cases, because it is only in this way that the real difficulties of the subject can be appreciated. But a much simpler question may be put; can the fugitive prove an *alibi*? It will be seen at once that this question falls into the same category as those just considered, and forms part of a larger question, whether there is any limit to the magistrate's power of receiving evidence on the facts. A useful discussion on the point will be found in Byron and Chalmers' book, where a reference is made to Sir Edward Clarke's suggestion that "if a *prima facie* case is made out, the magistrate is not entitled to hear evidence for the defence in contradiction." If this is sound, then evidence as to the prisoner's identity, as to his nationality, in proof of his *alibi*, and as to the locality of the crime, would be excluded. Since the publication of that book, Lord Alverstone, C.J., in *R. v. Zossenheim*, has expressly approved of the suggestions made in it; and it may now be taken to be the law that the magistrate must consider evidence tendered by the prisoner, just as he would in an English case.

Chap. III.
Sec. VI.

Proof of *alibi*.

PP. 41, *et seq.*

R. v. Zossenheim.
20 T.L.R. 121.

Evidence for
defence to be
taken as in an
English case.

But this only disposes of half the difficulty; there still remain those matters which are specially dealt with in s. 9 and s. 3 (1), as well as those cognate matters omitted from s. 9, the nationality of the prisoner and the locality of the crime. With regard to them, there is not only the question whether the magistrate may receive evidence, but also, as in the case of s. 9, whether he may base his decision on the evidence. In these matters this is of course the important point, for, as was pointed out above, evidence on these heads may come out incidentally at the trial. The question does not seem to have been considered, and there are certain cases in which the magistrate seems to have received evidence of nationality. I can therefore do no more than suggest reasons why the decision of the magistrate should not be given on it; and why, assuming the evidence to have been received, these questions should only be dealt with in the report to the Secretary of State.

Evidence which
is not taken in
an English case.

There can be no doubt, in the first place, that an unfavourable decision on these points would be tantamount to challenging the statement of the foreign Government; and although it must be conceded that the Secretary of State is not bound by these

Chap. III.
Sec. VI.

statements, yet he will express his views through the usual diplomatic channels, and it is inexpedient that this should be left to the magistrate. But there is a still more potent reason; the discharge is left entirely to the magistrate's discretion; and although as I have said, the discharge may possibly not preclude another application, yet a discharge gives the fugitive another chance of escape, and as all these questions, those omitted from as well as those included in s. 9 and s. 3 (1), are of extreme delicacy, it was probably thought advisable that the decision of them should not be left to the magistrate.

cf. pp. 77, 88.

Magistrate
should not
decide these
questions.

For these reasons it is suggested that the omission in the second paragraph of s. 9 and in s. 3 (1), of any mention of the power of the magistrate to act on the evidence taken by him on these points is deliberate, and that the same principle applies both to the fugitive's nationality and the locality of the crime. For there is the Court beyond both the magistrate and the Secretary of State; and the convenient hypothesis is that if there is anything to be said on behalf of the prisoner's liberty it will not want for the saying, and will be very fully said to the Court on an application for *habeas corpus*; the question is therefore left to the prisoner to raise should he be so advised.

Justification.

Facts tending to prove justification must however be excluded from the principle suggested above, although they would be receivable in an English case; for that is a question of law, and must be governed by the law of the country where the offence was committed. This passage occurs in the discussion of the subject in Byron and Chalmers' book referred to above:— "Wherever the prisoner can show that he had an antecedent justification for the act complained of, so as to remove it from the category of crime, he is entitled to the benefit of this evidence, if he can establish it to the satisfaction of the magistrate." I venture, with deference, to doubt the soundness of this opinion. Suppose that by the law of, say, Russia, the order of a superior officer were a good defence; how would it be possible for the English magistrate to deal with evidence on such a point, and administering as he does the opposite principle, properly to appreciate it? Or, to take the converse case; suppose an offence to have been committed in England, it is not possible to admit that the Russian magistrate would have the right to discharge the prisoner on such a ground.

at p. 42.

cf. *ib.* p. 41.

In connexion with the above discussion, it should be noted that the practice is to allow the fugitive to avail himself of the

right to give evidence under the Criminal Evidence Act, 1898, at the hearing before the magistrate.

Chap. III.
Sec. VI.

61 & 62 Vict.
c. 36.

Before leaving this question, one further point must be noticed. The police magistrate at the hearing is acting in virtue of the second warrant, unless he has acted throughout the case, as where he himself has issued the summary warrant; and under the warrant issued by the first magistrate in virtue of the Secretary of State's order, where there has been a requisition to start with. So far as the hearing is concerned, therefore, the magistrate is entirely independent of the Secretary of State, the original order having expired after the warrant was issued. This, I think, is the meaning of the following sentence in the judgment of Blackburn, J., in *re Counhaye*:—

c. p. 89.

re Counhaye.
L.R. 8 Q.B. 410.

“As to the objection that the terms of the treaty have not been complied with, and the order of the Secretary of State ought therefore not to have been made, I do not think that affects the magistrate's jurisdiction; if the conditions of the treaty have not been complied with the Secretary of State might have refused to order the magistrate to proceed; but these conditions are not in the Act of Parliament; and the Secretary of State having made an order, and the magistrate having acted under it, all we have to do is to look at the Act to see whether he had jurisdiction under it.”

The foreign warrant.

But s. 10 refers expressly to one condition which must be fulfilled before the magistrate gets to the evidence on the facts;—“if the foreign warrant authorising the arrest of such criminal is duly authenticated.”

The foreign warrant appears here for the first time, and its production is made an essential preliminary to the hearing. The position in which this section places it emphasises what has been said with regard to the very different character of the two parts of the extradition proceedings. For the purpose of the arrest the foreign warrant is not necessary, either to the Secretary of State or to the magistrate who issues the summary warrant; its production would probably entail delay; the preliminary procedure has therefore been assimilated to that which obtains in England in regard to the issue of warrants of arrest; in the case of the formal requisition the responsibility of the accredited representative of the foreign State is assumed to be sufficient for the Secretary of State to act. But when we come to the

Foreign warrant
to be produced
at the hearing.

Chap. III.
Sec. VI.

hearing, it is obvious that the existence of a foreign warrant of arrest must be proved, for the fact that the fugitive is a person charged with crime could not otherwise be substantiated; the foreign warrant is therefore the basis of the whole proceeding. The intention of the foreign Government to prosecute, sufficient to justify his apprehension, is manifestly insufficient if the case is to proceed; action must have replaced it, and the foreign warrant is the only document which can establish this. Its existence may be proved by the production of the original or certified copy as indicated above.

Definition of
"foreign
warrant."

But "warrant" is a technical English term, and in the case of a foreign State, s. 26 defines it to include, "any judicial document authorising the arrest of a person accused or convicted of crime."

re Coppin,
L.R. 2 Cl., App. 47.

The questions which arise in connexion with this branch of the subject were considered in 1866, under 29 & 30 Vict. c. 121, in *re Coppin*. The depositions had been taken four years before, at a time when proof of a different kind would have been necessary. Lord Chelmsford, C., held that it was immaterial when the depositions were made, so long as they were authenticated as required by the law in force when they were used. The trifling point was then taken that as by s. 2 of 6 & 7 Vict. c. 75, "copies of depositions upon which the original warrant was granted" were allowed to be used, the originals which had been sent over from France were insufficient. By s. 3, the party applying was required to be "the bearer of a warrant of arrest or other equivalent judicial document, issued by a Judge or competent magistrate in France, authenticated in such manner as would justify the arrest of the supposed offender in France upon the same charge." The document sent over was a *mise en accusation*, which was not signed. But Lord Chelmsford said, "How do we know that a warrant requires signature in France"? It purported to be a warrant, for it had the seal of the *Procureur Impérial*, and of the Ministry of Justice, and he held this to be sufficient.

Currency not
given to foreign
warrant.

But although the foreign warrant is the essential basis of the English proceedings, it is fundamental to the subject that these proceedings are not intended to give that warrant currency in England.

of p. 33.

The policy of the Act will bear repeating at this point. The Secretary of State is not to surrender the fugitive until he has been satisfied, with the assistance of the magistrate, that he is

a criminal; and the only way in which he can be satisfied is by a hearing which will establish a *prima facie* case of guilt according to our own law, in which the foreign crime is supposed to be transplanted to England, together with everything connected with its commission.

Chap. III.
Sec. VI.

And so we come to the great difficulty of the subject; the Act only sanctions extradition for the crimes specified in the schedule, as they are defined by the law of England.

Before considering it, a preliminary point which springs from it in relation to the foreign warrant may be disposed of. The point has been much discussed how far the foreign warrant ought to correspond with English law by setting out a crime included in the schedule, together with the subsidiary point whether the English warrant of apprehension ought to correspond with the foreign warrant.

Foreign warrant need not correspond with English law.

The fundamental principle, as it has been stated above, was laid down in *R. v. Ganz*. The points were taken that the original warrant and not a copy, must be produced; and secondly, that the document headed "copy" which was produced was not the copy of a warrant, but of certain proceedings leading to the issue of a warrant. Pollock, B., said "there has sometimes been a little confusion of thought on the subject. It is not intended by the statute to give effect or currency to any foreign warrant within this country; only to provide machinery whereby if it can be shewn by sufficient evidence that a person has committed an offence and escaped, he may be committed until he can be surrendered." With regard to the document in question the Court, after examining it, came to the conclusion that it was a judicial document authorising the arrest of the fugitive, and that it was in reality an original. §

R. v. Ganz.
9 Q.B.D. 93.

On the question whether the foreign warrant should correspond with the schedule by setting out an English crime, Stephen, J., said in *R. v. Jacobi*;—"With regard to the warrant, it is said that it does not set forth such a crime as is contained in the

R. v. Jacobi.
46 L.T. 595.

§ The point raised in this case is an important one, because although s. 15 begins, "Foreign warrants and depositions or statements on oath, and copies thereof . . .," there is no "manner provided" for the authentication of copies of warrants. It is therefore of first importance that the Court should appreciate what the foreign document produced really is. In the case the document bore the official seal of the Department of Justice, and Manisty, J., said,—"Though headed 'copy' it seems to me really for this purpose to be an original document. There would, I suppose, be the record of this order on the records of the Court, but this would appear to be the document issued by the Court which authorises the arrest."

Necessary for appreciating nature of document produced from abroad.

Chap. III.
Sec. VI.

schedule of extradition offences. . . . That objection appears to me to be a fallacy. I think the warrant and the evidence are two distinct things. I think that the warrant need shew nothing more than the fact that it has been issued by some competent authority, and is in fact an official document for the arrest of the prisoner."

exp. Piot.
48 L.T. 120.

In *ex parte Piot*, the foreign warrant was for *abus de confiance*; and the point taken was that the foreign warrant did not disclose any offence sufficient to bring the prisoner within the Act. Pollock, B., said that the treaty and the statute must be taken together; but that "a distinction is preserved throughout between the substance of the offence committed and the form of the warrant for apprehension. We cannot say what is meant by *abus de confiance*, because we do not know the foreign law." The result of the cases was, in his opinion, that it is unnecessary to insert the legal definition, *i.e.* the English definition, of the crime in the foreign warrant.

re Belencontre.
1891, 2 Q.B. 122.

So in *re Belencontre*, the foreign warrant charged the prisoner with embezzlement and other offences against the French law of notaries. The English law does not know what a notary is, as we have no such judicial officer. The magistrate's warrant referred to fraud by a bailee and fraud by an agent. It was held that extradition proceedings could be taken on the foreign warrant, and that the English warrant also was accurate and sufficient.

Cave, J., said;—

"The first or technical point [made on the prisoner's behalf] had reference to the form of the French warrant, the warrant of the Secretary of State, and the warrant of Sir John Bridge; and it was contended that they or some of them were not in proper form. I am of opinion that there is nothing in that ground of objection. When one comes to look at the French warrant it appears to me to state an offence within No. 18 of the crimes for which extradition is to be granted. It states in effect that the prisoner was in nineteen cases guilty of an abuse of confidence and of fraudulent misappropriation of the property which had been deposited with him in his character of a notary. That seems to me a sufficient statement of an offence under No. 18 of the extradition treaty. The warrant of the Secretary of State only translates that into the corresponding English provision of the same article, and describes the charge as one of fraud by a bailee. That no doubt is somewhat wider than the statement in the French warrant, which specifies fraudulent misappropriation by a notary who has been intrusted with the property, but I see no objection to it on the ground of its being wider. The duty

of the Secretary of State is to call the attention of the police magistrate to what he is required to do under the extradition treaty, and it is enough if he draws attention to the particular crime under the 3rd article of the extradition treaty, and that is fraud by a bailee, which expresses in general terms what is expressed rather more specifically in the French warrant. The warrant of Sir John Bridge seems to me also perfectly good. 'Fraud by a bailee' is a term used in No. 18, and it is for the magistrate to enquire whether the evidence laid before him shews an offence of 'fraud by a bailee' of such a nature as would be cognisable in an English Court of Justice."

Chap. III.
Sec. VI.

The last sentence refers to the principle with which we must now deal—the offence actually proved must be "of such a nature as would be cognisable in an English Court of Justice." And the next sentence of the judgment will form a fitting introduction to the discussion.

An offence
cognisable by
English law
to be proved.

"Now, in order to do that, he has to consider the law in respect of frauds by bailees and the evidence which is produced before him, and he arrives at the conclusion that there is evidence of a fraud by a bailee who is an agent of the party. Although it might not be sufficient to convict any bailee in an English Court of Justice, it is sufficient for the purpose when the bailee who is charged is an agent. It seems to me that is a very proper mode of expressing the result of the enquiry, and that there is no ground for saying that there is any technical informality in any of these warrants which would justify us in discharging the prisoner."

Extradition limited to offences under English law.

If we look at the treaties we find in them a list of crimes in respect of which surrender is mutually agreed upon; the treaty is usually in two languages, neither text having any greater force given to it than the other. But if we turn to the Act, "extradition crime" is defined as "a crime which, if committed in England or within English jurisdiction, would be one of the crimes described in the first schedule to this Act." And the schedule commences with the statement, that the list of crimes "is to be construed according to the law existing in England . . . at the date of the alleged crime."

The surrender
under the treaty
and under the
Act.

The mere statement of the case seems to shew a curious discrepancy between the Act and the treaties. Both sides of the bilingual list of extradition offences, must, for the present, be assumed to be identical in language. But the most superficial knowledge of foreign laws shews us that they cannot be identical in meaning. For example, the French law of homicide differs essentially from the English law. The English assumption that

The bilingual
lists of crimes.

Chap. III.
Sec. VI.

The meaning
of the bilingual
lists of crimes.

killing is murder unless the prisoner shews the absence of malice aforethought is unknown in France, where killing is not murder unless the prosecution proves premeditation. Or again, "crimes against the law of bankruptcy," which is a common item in the lists, obviously refers to two different laws, according as the offence has been committed in one country or the other. And what is true of the crimes which are capable of simple expression, is doubly true of the more complex crimes. Now, if in order to meet this difficulty we were to say, what indeed seems natural, that each country will be guided in its surrenders by its own text of the treaty, we might arrive at this; that England would only surrender for offences specified in the English text, which would inevitably mean, the offences as they are known to English law; and France, for example, would only surrender for offences specified in the French text, that is, the offences as they are known to French law. But this is diametrically opposed to the fundamental principles of extradition, and the inverse of what they require. For a fugitive is surrendered by England for an offence against French law, from France for an offence against English law. To take a not very complicated case. We should not expect to find the question of the surrender of a person in England charged with fraudulent bankruptcy determined by examining whether his offence comes within the English Bankruptcy Act. The two laws might be so diametrically opposed to one another (as in fact they are in the case of non-traders), that the object of the treaty in this instance might be defeated. Nor should we expect to find the question of the surrender of a person in France charged with an offence against the English law of bankruptcy, determined by an examination into the French law of bankruptcy, which may know nothing at all of the offence? Yet, *apparently* this is precisely what the English Act provides for; and presumably we expect that foreign countries will act on the same principle.

cf. p. 24.

From what has been said already upon the subject, it will have been understood that the reason for the statutory rule is that there is no reason. It is merely an arbitrary but practical principle, adopted for the purposes of overcoming the difficulties which surround extradition, and facilitating the surrender of criminals in just cases. Yet however arbitrary it may appear at first sight, foreign States may certainly be said to have accepted it, for, knowing our law, they are willing to enter into treaties with this country. I prefer this confessed absence of explanation,

rather than any reference to a supposed idea that English criminal law has anything to do with the matter, which it certainly has not; or to the time-honoured doctrine that one country does not recognise the criminal law of another. Perhaps it might have been expressed differently than it is in the preamble to the schedule; difficult cases undoubtedly arise in its application, which seem to militate against the mutual assistance which the arrangements between different States are intended to promote; but I doubt whether the most rigidly scientific of jurists could have hit on a better system, though he might have expressed it more lucidly. Of course *locus regit actum*; but the rule which the Act has created does not in any way conflict with that maxim; for when the fugitive is surrendered he will be judged by the law of the place where the crime was committed.

But the principle that a reference to English criminality is an integral part of the system of extradition being accepted, we must now see how the Judges have interpreted the rule; how they have dealt with the two-fold direction contained in the Act and in the treaties with their bilingual list of crimes.

It will be found that they have, if I may use the expression, rough-hewn a rule, which has these peculiar characteristics: first, that it is by no means obvious, and requires some stretching of legal thought to grasp its origin; secondly, that it does exactly, and in a most remarkable manner, hit off and carry out the intention of the treaties. The cases presently to be cited follow in direct sequence those which have already been referred to which deal with the foreign warrant of arrest, and the preliminary warrants which are issued in England; but they deal with the more important question of the warrant of committal for surrender: how far this warrant must conform to the treaty, while at the same time conforming to our arbitrary statutory principle. In other words, we have now to consider on what principle extradition is really granted in practice.

We must endeavour to ascertain what the treaties in their accepted form do in fact establish. First, what is the effect of the English list of crimes in the treaties? It must be assumed to be within the limits imposed by the schedule to the Act; therefore it is an effective clause in the treaty, and cannot be looked on as merely a translation of the foreign text; and the reference in any given case must be to the English list in the treaty and not to the list in the English Act, with which the foreign State, except by inference, has nothing to do. To take a

The Judge-made interpretation of the rule,

cf. p. 107.

and practical principle of extradition.

Primary meaning of English list of crimes;

it governs surrender from England.

Chap. III.
Sec. VI.

familiar example; the combined effect of the schedules to the Acts of 1870 and 1873, is that "crimes against bankruptcy law" are extradition offences; but if in the list in any treaty this only was inserted—"crimes by bankrupts against bankruptcy law," then a person other than a bankrupt who had committed a crime against that law would not be surrendered (*R. v. Wilson*).

R. v. Wilson.
3 Q.B.D. 42.
cf. ante, p. 36.

Primary meaning
of foreign list of
crimes;

it governs
surrender from
foreign country.

cf. p. 31.

Secondary
meaning of
the lists;

they govern
surrender to
the other
country.

Secondly, what is the effect of the foreign list of crimes in the treaty? This also is an effective clause, and cannot be looked on as a mere translation of the English text. So far as extradition from this country is concerned, it means that the acts on which the charge against the fugitive is based must come within it. This leads to this paraphrase of the definition of "extradition crime" in the application of the Act to the treaty:—acts which come within the foreign list of crimes in the treaty, which (if committed in England or within English jurisdiction) also come within the English list of crimes in the treaty; and if this condition is fulfilled, and the case falls within the schedule, the person who has committed them will be surrendered by England. Invert the sentences, and we get to the condition for the surrender of fugitives to England by the foreign country, except that the reference to the schedule is unnecessary.

This severance of the operation of the two lists in order to understand the reciprocal obligations seems to be the inevitable result of the form of the treaty, and it will become clearer if we turn for a moment to the procedure clauses. We find them drafted in the early treaties in a reciprocal form; but in the later treaties, in order to deal with the differences in the procedures of the two countries, a separate clause is introduced defining the action to be taken on the requisition in each country. So in the article dealing with offences, each of the lists must have its special object; this object is manifest, for the lists are linked on to the agreement to extradite in the first article of all the treaties—each Party engages to deliver up to the other persons who are accused of any of the crimes enumerated, committed within the territory of that other Party: that is to say, crimes according to the law of that country. Amplified, this can only mean that England engages to surrender, for example, to France, persons accused of crimes coming within the French list; France engages to surrender persons accused of crimes coming within the English list.

This establishes this important point, that the two lists are independent, each having its special function. They are not

translations one of the other, for that would be beside their purpose. But it is obvious that the object of the agreement can only be attained practically by embodying in the lists crimes which are approximate equivalents only.

Chap. III.
Sec. VI.

Lists contain approximately equivalent crimes.

But can we go further? Can we find in the treaty any recognition of the arbitrary principle with which we are dealing? Admitting that it has been accepted by the foreign country, we ought to find some trace of it; for otherwise the constant reference to it by the Secretary of State might lead to diplomatic representations being made in the event of refusals to surrender, and the success of extradition depends on its smooth working. I think this trace can be found. Once we have established that the bilingual lists are not translations, we may continue the train of thought suggested by the above argument. They are approximate equivalents; and each list determines, not only the cases in which the other country engages to surrender fugitives, but also the cases in which it will itself apply for fugitives to be surrendered.

Lists govern both surrender to and surrender by each country.

The two lists have not however been put into separate articles, but have been combined in one in double columns. Is there anything to be derived from the fact that these approximate equivalents are set face to face? It is suggested that this is done for a definite purpose; that the act charged must come within both definitions; in other words, that the act charged must come within the French text to warrant the surrender being asked for by France, and within the English text to warrant the surrender being granted by England; and *vice versa*. To take a simple illustration. The 14th item in the treaty with the Argentine is as follows:—

14. Arson.

14. Incendio voluntario.

If setting fire by negligence amounted to arson by English law, the requisition might be made by England, and the first condition would be satisfied. But it would be refused by the Argentine, because the arson was not voluntary.

I therefore find the principle in a rule of construction. I mean by this, that if a Court had one of the treaties before it, that is how it would be interpreted. The rule of construction, it is true, is not a very familiar one; but it has been evolved in the interpretation of laws which are in two languages, as in the case of the Penal Code of Mauritius: the rule being that that text is to be taken which is the most favourable to the prisoner, which is obviously the same rule stated in a different way.

The arbitrary rule is a rule of construction.

Chap. III.
Sec. VI.

This does not alter the fact that the principle is arbitrary, nor yet the further fact that it is convenient; it only shews that what the Courts have done, rough-hewing though the process appears to have been, may really be justified by an intelligible principle of construction. It does to my mind, however, go a little further: for it is difficult to see in what other form the treaties could have been drafted; and if so drafted this principle would have evolved itself.

I have elaborated this point with some minuteness, because in studying the decisions, which we must now examine, the rule laid down is not a little bewildering; and there is this difficulty constantly present, that in giving effect to a treaty, the Judges frequently refer to and base their decisions on an Act which is not mentioned in the treaties, and to a principle which has not been, in so many words, accepted by the other country.

R. v. Dix.
18 T.L.R. 231.

In *R. v. Dix*, the prisoner, who was a cashier in a bank, had received deposits from customers when the bank was insolvent, or at least in failing circumstances. The Attorney-General admitted that this disclosed no offence known to the law of England, and therefore, that the case could not be proceeded with on that ground. But the prisoner was also charged with having discounted worthless bills of his own with the bank, and to have drawn cheques on his overdrawn account. Now by the law of the United States that was called "larceny by embezzlement;" but by English law it was neither larceny nor embezzlement, but it came within s. 81 of the Larceny Act, 1861, which deals with fraudulent appropriation by an officer of money belonging to a body corporate. Therefore, the evidence shewed that an offence had been committed which was a crime by both countries, although it was called by a different name in each. The Court held that where the same facts would prove a crime to have been committed within the laws of both countries, the fact that it was not called by the same name in each was immaterial, and the prisoner was surrendered. The difficulty appeared in its simplest form in this case, because the list of crimes was in one language only, and the laws of the two countries corresponded in spirit though not in nomenclature.

24 & 25 Vict.
c. 96.

R. v. Kohn.
16 T.L.R. 247.

In *R. v. Kohn*, the prisoner was arrested for obtaining jewellery by false pretences in Germany; he was committed by the magistrate for "fraud by an agent and larceny by a bailee." The prisoner's explanation was that he had bought a brooch on credit in order to sell it to an American lady; but that she had left for

England and he had followed her there. The Solicitor General admitted that although the evidence before the magistrate supported a charge of obtaining goods by false pretences by German law, it did not support such an offence by English law. The magistrate had, therefore, described it in his committal order as stated above. The Court held that as the act was called by a different name in the two countries the magistrate was right, for he had simply changed the description of the offence charged into the description under which the act alleged was known in English law. If that could not be done the extradition treaties would be of no value.

Chap. III.
Sec. VI.

In *R. v. Jacobi*, the foreign warrant merely stated that the prisoners were suspected of fraud. The warrant of apprehension stated that certain goods had been obtained by them "with intent to procure for themselves some illegal pecuniary benefit." The committal was for obtaining goods by false pretences, and this was held good because the substance of this offence was proved by the facts. Pollock, B., said, "If you were to attempt to say that each warrant must absolutely contain the exact language of our criminal law abroad and at home, the statute would become a dead-letter." The essential to the delivery up of the prisoner was that it should appear upon the evidence given before the magistrate that he might have been committed for trial if the crime had occurred in England.

R. v. Jacobi.
46 L.T. 695.

Part of the judgment of Stephen, J., has already been quoted; *cf.* p. 107. the remainder contains a most lucid exposition of both branches of the law on this question.

"I think that the provisions relating to evidence provide the real safeguard against improper extraditions. I think that it is essential to the delivery up of the prisoner that it should appear upon the evidence given before the magistrate that he might have been committed for trial for one or other of the crimes mentioned in the first schedule if he had done in England the the act which he is alleged to have done in a foreign country. Every one of the extradition crimes, when you come to look at them, are taken from English law, and everybody who is at all familiar with such subjects must be well aware of the fact that the definitions of crimes given in the law of England are peculiar to English law, and to the law of those countries which, like America, have derived the greater part of their criminal law from our own. For instance, in some cases, the English definitions are wider, and in other cases the English definitions are narrower, than those which prevail upon the Continent. If it were necessary for the warrant to set forth precisely the crime for which the magistrate is bound to see that there is sufficient

Chap. III.
Sec. VI.

evidence to put a man upon his trial, every foreign magistrate who issued a warrant available for the purposes of this Act would have to be acquainted with the law of England. I take it both ways. For instance, the definition of manslaughter, which is one of the crimes for which extradition may be made, according to English law is exceedingly wide. Suppose it should be a fact, as I rather think it is, that a foreign magistrate, acting according to the French or the German Penal Code, were to issue a warrant for a man's apprehension for having in some way assaulted or wounded another, which had been followed by death and suppose that assaulting and wounding was not an extradition crime, if it appeared in evidence before the magistrate that death; had followed upon such assaulting or wounding, then, although the man might be tried, and probably would be tried for something very much less than causing death, *viz.*, for causing the injury which led to death, I think that the magistrate, if he saw his way to commit him for manslaughter, or would have seen his way to committing him for manslaughter if the act had been done in England, would have to issue his warrant for his extradition. There are many other things, and I might give illustrations taken from nearly every offence mentioned in the schedule. Here the prisoner is accused of a fraud. Upon the face of the warrant the prisoner is accused of a fraud, and of obtaining money by written promises which were given without apparently the intention of being fulfilled; in fact, he is accused of an offence very like what we call obtaining credit by false pretences. That is what is said on the face of the warrant. When you bring him before the magistrate, it appears that he did acts for which the magistrate thinks he ought to be committed for trial for obtaining goods by false pretences, which is an extradition crime. That being so, it seems to me that, although the warrant is for a different offence, his committal within the Act is proper."

One sentence in the judgment of Stephen, J., I venture, with diffidence, to criticise. The words "if he saw his way to commit him for manslaughter" should be omitted; because the magistrate is not to commit the fugitive for the English offence, but for extradition on account of the offence committed abroad. I venture to paraphrase that part of the judgment thus:—Suppose that a French magistrate were to issue a warrant for a man's apprehension for having assaulted and wounded another, which wound had been followed by death; and suppose that assaulting and wounding was not an extradition crime, because it was not in the list of English offences in the treaty, then, if it appeared in evidence before the magistrate that death had followed upon such assaulting and wounding, if he would have seen his way to committing him for manslaughter if the act had been done in England, he is to issue his warrant of committal for surrender,

and the fact that he will be tried in the foreign country not for manslaughter, but for some less crime, is a matter which does not concern him. The crime may, of course, be graver, and the prisoner liable to a more severe punishment in the foreign country than in England.

Chap. III.
Sec. VI.

In *re Belencontre*, already referred to, where a notary was charged with embezzlement in France, the magistrate had arrived at the conclusion that there was evidence of a fraud by a bailee who was an agent. Although it might not have been sufficient to convict any bailee in an English Court, it was held to be sufficient for the purpose of extradition when the bailee who was charged was an agent; and therefore that it was the proper mode of expressing the result of the enquiry in the warrant for committal. Wills, J., said,—“We cannot expect that the definitions or descriptions of the crime when translated into the language of the two countries respectively should exactly correspond. The definitions may have grown up under widely different circumstances in the two countries; and if an exact correspondence were required in mere matter of definition, probably there would be great difficulty in laying down what crimes could be made the subjects of extradition. Now this difficulty has been met, as it seems to me, by the first schedule to the Act of 1870, which describes what are the various extradition crimes.” The 19 cases of embezzlement with which the prisoner was charged fell within art. 408 of the French Code, and under the French part of the treaty; “one looks then to see whether in the corresponding English section, No. *xviii* of art. 3, there is a crime described by English law which crime has been made out by the evidence.”

re Belencontre.
1891, 2 Q. B. 122.
cf. ante, p. 108.

The distinction between the foreign and English law in this case is typical of many cases which might arise. By French law the crime was described as “abuse of confidence or fraudulent misappropriation by any person entrusted with property.” By English law a bailee is liable for misappropriation if he must return the goods *in specie*, but not if he may or must convert the articles into something else. The bailee is thus by English law fenced round with exceptions; but in four out of the 19 cases charged there was an offence against English law. Further, s. 76 of the Larceny Act, 1861, deals with an attorney or agent entrusted with property for safe custody who commits frauds in respect of it; and the prisoner answered this description as nearly as a person carrying on business in France could.

24 & 25 *Vict.*
c. 96.

Chap. III.
Sec. VI.

The warrant was general, committing the prisoner for crimes described in No. *xviii* of art. 3, and it was held to be sufficient if there were facts which were evidence that such crimes had been committed. The warrant is statutory in its form, and is not to be construed as an ordinary English common law document; and it is not at all necessary that there should be anything like the same particularity that there would be in respect of the warrant of committal to the gaols of this country in ordinary circumstances.

exp. Meses.
18 L.T. 475.

The same point underlies the decision in *ex parte Meses*. The prisoner was charged in the warrant with having committed offences against the bankruptcy laws of Belgium; and the point was taken that the adjudication in Belgium had been founded on a debt less than £50, so that there would have been no adjudication in England, and therefore there could be no offence against the law of England because there could have been no bankruptcy. Lord Alverstone, C.J., pointed out that in order to construe the treaty it was necessary to assume that it was not concerned with the preliminary steps which led up to the bankruptcy. It was true that the words of the treaty were to be construed strictly; but all the words specifying the extradition crimes are general and not particular. In the case of bankruptcy it is obvious that the conditions of adjudication must vary in different countries, and therefore it was impossible to enquire into the merits or foundations of the adjudication abroad. And so in the case of other generic crimes, as Kelly, C.B., pointed out in *ex parte Terraz*, the descriptive words are general, but the ingredients of a crime known by the same name in two countries may differ. Extradition would be impossible were the rule otherwise, and strict identity in detail insisted on.

exp. Terraz.
4 Ex. D. 63.
cf. ante, p. 92.

General principle
of extradition.

The principle which the cases establish is, therefore, this:—the facts which have been committed in the foreign country are to be looked to, and not the name by which they are known. If these facts constitute crime *A* in the foreign country, the first essential to extradition, that it shall be a crime mentioned in the list of foreign crimes in the treaty with that country, is satisfied. Then those facts have to be submitted to the magistrate; and if according to the principles governing English preliminary enquiries, they constitute a case for committal for a crime, which may be crime *B* in the treaty and the schedule to the Act, then the warrant for surrender may be issued. How far the first part of this principle falls within the province of the English Court to determine will be presently considered.

The forms of warrants given in 2nd schedule to the Act may here be noticed. The warrant of committal recites that the prisoner was called on to shew cause why he should not be surrendered "on the ground of his being accused of the commission of the crime of _____ within the jurisdiction of _____," and that he had shewn no sufficient cause. And the warrant issued by the Secretary of State for the prisoner's surrender recites that the prisoner was "accused of the commission of the crime of _____ within the jurisdiction of _____." Neither form contemplates a reference to an English crime; for it would be impossible to say that the prisoner was accused of having committed an English crime within the jurisdiction of a foreign country. There is no necessity therefore, in either form, to refer to the corresponding English offence by name, nor to the fact that the foreign offence is also a crime by English law.

Chap. III.
Sec. VI.

Forms of
warrants.

The question then arises, whether it is possible for this principle to be extended as so to include the case where the offence for which the warrant is issued abroad is not within the list of foreign crimes in the treaty. This seems to be supported by *re Coppin*, already referred to. The prisoner was not charged with forgery, but with "uttering," which was not included in either the treaty with France or the Act. Lord Chelmsford, C., having read the evidence, said that "it would be a hopeless task to contend that the magistrate would not have been justified in committing the prisoner for trial for forgery if the offence had been committed in this country," and, therefore, that he was right in committing him for surrender. In view of what has already been said, it is doubtful whether this proposition could be supported on the construction of a bilingual treaty. It is just possible, however, that under the early treaties and statutes, which were drafted in reciprocal and not bilingual form, that it was sufficient to shew that the facts did bring the case within the definition of an extraditable crime by the law of the extraditing country. The difference in interpreting bilingual treaties and those drafted in one language arises in the next case, *re Windsor*. It was decided on a point which arises specially in connexion with the extradition treaty with the United States, and is therefore still an important case. The charge against the prisoner was for forgery; the offence he had in fact committed was making a false entry in the books of a bank for

Case of crime
not within
foreign list.

re Coppin.
L.R. 2 Ch. App. 47.
cf. ante, p. 106.

re Windsor.
6 B. & S. 522.

Case under
Ashburton
Treaty.

Chap. III.
Sec. VI.

Interpretation of
treaties which
are not bilingual.

fraudulent purposes. But this is not forgery by English law, § and in the absence of anything proving the contrary, the Court held that the law of the United States must be taken to be the same as our own. The offence, however, was forgery by the law of New York State. It was held that the agreement to surrender must be taken to apply only to offences which have some common element in the legislation of the two countries. "Forgery" must therefore have been used in the sense in which it is used in our own law and in the law of the United States, and not in the sense which it might have in any particular State of the Union. The decision has given rise to some criticism. But it was based on the Act specially passed to give effect to the treaty, and not on a general Act; and moreover, the same language was used by both Parties to the treaty. There was no bilingual list of crimes, nor even two versions of the same treaty in different languages, and the Act simply reproduced the words of the treaty. In such circumstances this seems an intelligible rule of interpretation; that the two Parties using a name for a crime which is to do duty for both countries, it must be interpreted as each of the Parties itself would interpret it. The assumption of the Court was that both Parties would interpret it in the same way. But supposing that there were differences in the meaning of the word as used in the two countries, then we may take the treaty as containing a double list of crimes, and that "forgery" would figure on the English side, and "forgery" on the American side; to which the rule already deduced from the bilingual lists is applicable, and we should come to the same conclusion as before; that the case of American forgery on which the requisition was based did not come within the definition of English forgery, and therefore the surrender would be refused. The real point of the case is that it is an example of the negative application of the rule that the crime must be one by English law for the surrender to be granted, whereas the other cases have nearly all been examples of crimes committed abroad which have in fact satisfied this test. It is curious to note, however, that the point referred to by Cockburn, C.J., really did not arise, because Blackburn, J., pointed out that the offence was not forgery by the law of New York State; it only provided that the offence should be punished "as if for forgery."

But the point taken by the Chief Justice is important and

§ It now falls within the Falsification of Accounts Act, 1875.

requires consideration, because it might be applied with effect by a foreign country to the different laws prevailing in the United Kingdom. I think it may be dealt with on a broader ground. The Act applies to England, Scotland, and Ireland, but refers its definition of "extradition crimes" to the law of England. Supposing the surrender of a Frenchman escaped to Scotland demanded for an offence under French law which was also an offence under Scotch law, the test would be the ultimate reference to the criminal law of England, and unless it came within it the surrender would be refused. And although the schedule to the Act does not apply to surrenders to the United Kingdom, yet if the interpretation of the bilingual lists of the treaties which I have suggested is sound, the surrender by a foreign country of a fugitive from Scotland for an offence against Scotch law which was not also an offence against English law, would not come within the treaty. The effect of this principle on extradition to and from the colonies will be considered in due course.

Chap. III.
Sec. VI.

Offence under
law of one part
of the United
Kingdom.

We now come to *re Arton* (No. 2), which was the argument on the rule *nisi* for the *habeas corpus* obtained in *re Arton*. I have reserved it to the last, on account of the important questions to which it gives rise.

re Arton (No. 2).
1896, 1 Q.B. 509.
cf. ante, p. 57.

Arton's extradition was demanded by the French Government on the allegation that he had committed a number of crimes against the law of France, and the magistrate had committed him in respect of the accusation against him of the commission of the crimes of "*faux* (falsification of accounts and using falsified accounts), fraud by an agent, fraud by a trustee, fraud by a director and public officer of a company, obtaining money and goods by false pretences, crimes by a bankrupt against the bankruptcy law, larceny and embezzlement." The only question arose in reference to the first of these charges. The magistrate had come to the conclusion that there was no evidence of forgery according to English law; but that there was sufficient evidence of fraudulent falsification of accounts in his character of member and director of a public company according to English law, "and that such falsification of accounts constituted the crime of '*faux*' within the meaning of art. 147 of the *Code Pénal*."

The first point taken was that the falsification was not in the order of committal described as committed by Arton as a director, officer, or member of a public company, or as a clerk, officer, or servant, which description would be necessary to constitute falsification a crime according to English law. This

Chap. III.
Sec. VI.

Lord Russell's
analysis of the
reference to
English law.

was dismissed as not being a point of substance; but the order was remitted to the magistrate in order that it might be made clear in what capacity the crime of falsification had been committed. §

The second point was that even if the order of committal were amended in this respect, the magistrate could not properly commit for falsification, on the ground that such falsification is not an extradition crime within the treaty. This involves the point which has been dealt with in the cases already cited; and Lord Russell's analysis was on the following lines.

First, as to the English version of the treaty. Art. III, *xviii*, runs—"fraud by a bailee, banker, agent, factor, trustee, or director, member, or public officer, of any public company, made criminal by any Act for the time being in force."

Secondly, the Acts in force relating to the crime charged, at the time the treaty was ratified, were s. 83 of the Larceny Act, 1861, and the Act of 1875,—“to amend the law with regard to falsification of accounts.” From this the first conclusion was, “that the falsification charged, if committed by a member, public officer, or director of a public company, or by a clerk or servant, is within the English version of the treaty.”

Secondly, the French version of the same item runs,—

Abus de confiance ou détournement par un banquier, commissionnaire, administrateur, tuteur, curateur, liquidateur, syndic, officier ministériel, directeur, membre ou employé d'une société, ou par toute autre personne.

This is “not a translation of the English version, nor does it in substance cover the same ground. It deals with the fraudulent misappropriation by officers and members of a company of the funds of a company. It has no reference to falsification of accounts, pure and simple, by such officers and members. The English version, on the other hand, is much wider, and by its incorporation of the Acts of 1861 and 1875, includes falsification of accounts in the manner charged against Arton.”

Thirdly, was there any other item under which such falsification of accounts fell? Item *ii* deals with, *inter alia*, “forgery” in the

§ It was ordered to be drawn up as follows:—“The crime of fraudulent falsification of accounts as a director &c., according to the law of England, and constituting the crime of *faux en écritures de commerce*, within art. 147 of the French *Code Pénal*.” In connexion with this order, the statutory forms of warrants should be referred to; the reference in it to the English law seems unnecessary.

cf. p. 119.

English version, and "*faux ou usage de pièces fausses*" in the French version.

Chap. III.
Sec. VI.

"It is clear that all falsifications of accounts do not constitute forgery; while it is equally clear that the falsification of accounts may take such a form as to amount to forgery at common law, or under" the Forgery Act, 1861. But the magistrate had come to the conclusion that there was no evidence of forgery by English law, but that there was evidence of forgery according to French law; and the Court thought that this conclusion was warranted, because the words used in item *ii* meant "forgery of or using false documents."

Lord Russell's
analysis of the
reference to
English law.

Fourthly, there is an article in the *Code Pénal* [art. 147], which covers and includes falsification of accounts according to English law; it deals with the crime known as "*faux en écritures de commerce*." Therefore the crime is within the French version of the treaty.

From this the second conclusion was, that "it is an extradition crime according to and within both versions of the treaty."

Finally, the crime, whether regarded as forgery or falsification of accounts, is an extradition crime within the meaning of the Extradition Acts.

Lord Russell continued:—

"The matter then stands thus: evidence of the crime of falsification of accounts according to English law not amounting to forgery according to that law, and within the 18th head of art. 3 of the treaty (English version); evidence also, that that crime of falsification is a crime according to French law, ranking itself, according to that law, under the head of forgery, and within head 2 of art. 3 of the treaty (French version). Why, then, is it not to be regarded as an extradition crime? I see no valid reason. English law, as I have said, treats some acts of falsification of accounts as forgery, but does not treat all of them as such. The French law on the other hand (as we must conclude, on the evidence of fact before us) treats such falsification of accounts as alleged in this case as forgery within art. 147 of the *Code Pénal*. Is extradition to be refused in respect of acts covered by the treaty, and gravely criminal according to the law of both countries, because in the particular case the falsification of accounts is not forgery according to English law, but falls under that head according to French law? I think not. To decide so would be to hinder the working and narrow the operation of most salutary international arrangements.

The English and French texts of the treaty are not translations. They are different versions; but versions which on the whole are in substantial agreement. We are dealing with a crime alleged to have been committed against the law of France;

Chap. III.
Sec. VI.

and if we find, as I hold that we do, that such a crime is a crime against the law of both countries, and is, in substance to be found in each version of the treaty, although under different heads, we are bound to give effect to the claim for extradition."

He declared further, that these treaties were to receive a liberal interpretation; but that this meant no more than that they should receive their true construction according to their language, object and intent.

By this process of reasoning the final form in which the principle must be stated was arrived at: that so long as what have been called the "convenient equivalents" are to be found somewhere in the two lists, their relative position is immaterial. I think that, although it does not tend to accurate drafting, this principle is both convenient and a logical consequence of what has already been said on the subject of the construction of the treaties.

Principle of
reference to
English law in
its final form.

But there is one point in the judgment which, with great respect, is difficult to understand—the examination into French law. Lord Russell stated the four conditions for extradition to be the following—(i) The imputed crime must be within the treaty; (ii) it must be a crime against the law of the demanding country; (iii) it must be a crime within the English Acts; (iv) the evidence must justify a committal if it had been an ordinary case of crime in this country.

The examination
into the foreign
law considered.

This is true; but it is doubtful whether the Courts have anything to do with all the parts of the proposition. There is no common law doctrine of extradition, and that fundamental principle must never be lost sight of, that the Court would immediately release a man arrested in England for a crime committed in a foreign country; the only reason why it cannot do so when extradition proceedings are in progress is the existence of the Act, and so far as the lawfulness of those proceedings are concerned it cannot go beyond the Act. But save only for the question of offences of a political character under s. 3 (1), no indications are given to the Court as to its action; there is only a direction that the prisoner is to be informed by the magistrate that he has a right to apply for a *habeas corpus*; and the sole question on *habeas corpus* is the alleged unlawfulness of the custody (*United States v. Gaynor*). This custody can only be lawful if it complies with the Act, which legalises the custody; therefore the Act itself must supply the materials for determining whether it is lawful, and also whether it is unlawful. Now there is nothing in the Act which suggests that the lawfulness of the foreign warrant

U. S. v. Gaynor.
1905, A.C. 128.

can be raised at any stage; on the contrary, the basis of the Act is that it is lawful, and the Secretary of State is authorised to act on it, and to direct the magistrate to issue a warrant to arrest the fugitive. Quite apart from the international question that faith must be given to a statement made by a foreign Government, which I think is fundamental to extradition, the Act itself here assumes it to be true, for it authorises the Secretary of State to act on it without enquiry, except with regard to the points already dealt with; and the treaty obligation to surrender is absolute. The point can best be appreciated by considering what the result would have been, if the Court in *Arton's case* had arrived at the conclusion that the crime alleged did not fall within the *Code Pénal*. It would have been a decision that the warrant ought not to have been issued in France. Such a decision must be entirely opposed to the fundamental ideas on which extradition is based.

Chap. III.
Sec. VI.

The examination
into the foreign
law considered.

cf. p. 121.

Again, it is clear that the magistrate has no power to go into the lawfulness of the issue of the warrant abroad. Therefore the evidence of the foreign law has to be introduced for the first time on the *habeas corpus* application, as in this case. But it is difficult to find the authority for this. The position of the Court on these applications was thus defined by Lord Russell, C.J., in *re Galwey*:—"After committal we should be entitled to review the magistrate's decision, not in the sense of entertaining an appeal from it, but in the sense of determining whether there was evidence enough to give him jurisdiction to make the order of committal. I mean evidence of the offence and of other necessary conditions for the application of the Act when the chief magistrate made the order of committal under which the prisoner is now in custody. The only ground on which this *habeas corpus* can be successfully maintained is that the committal order was made without jurisdiction and was illegal."

re Galwey,
1896, 1 Q.B. 230.

This case occurred in the same year as *Arton's case*, and it is I think fairly clear that Lord Russell, in referring to "other necessary conditions," had this question of foreign law in his mind. Yet the *dictum* itself excludes it; for if the magistrate could not have evidence on this point before him, the question falls to the ground. With great deference, therefore, I suggest that the examination into the French law was irrelevant to the enquiry, and that the question whether the arrest of the fugitive is illegal can only be enquired into on the basis that the foreign law has been complied with and rightly interpreted by the foreign

Chap. III.
Sec. VI.

Extradition
proceedings
auxiliary to
criminal
proceedings
abroad.

authorities who issued the warrant, which must be accepted for all that it implies in fact and law.

The position can perhaps best be explained in the following way. Extradition proceedings are auxiliary to the principal proceedings in the foreign country; they are governed by highly artificial rules peculiarly applicable to them, which lie altogether outside the foreign proceedings; for the purpose of getting the fugitive back these rules are superimposed on those proceedings; but the propriety of those proceedings is not one of the issues which arises in, or which it is agreed shall be submitted to, the English Court. In order to make the auxiliary proceedings workable, the theory is that the facts are to be transplanted into England, and an enquiry is to be held whether according to English law they were committed, which has been made the condition of surrender; but it is submitted that at no point does the question arise whether as a matter of fact they were committed abroad, or whether the foreign prosecution was justified.*

* This proposition will be more fully examined in Section XI.

Receiving
property stolen
abroad.

So ingrained has this principle become in what, for want of a better word, I may call international criminal law, that it has been adopted in the Act of 1896, dealing with the possession of property stolen abroad. This Act makes it an offence for a person without lawful excuse to receive or have in his possession, "any property stolen outside the United Kingdom, knowing such property to have been stolen." These clauses follow.

59 & 60 Vict.
c. 52.

(2) For the purposes of this section property shall be deemed to have been stolen where it has been taken, extorted, obtained, embezzled, converted, or disposed of, under such circumstances that if the act had been committed in the United Kingdom, the person committing it would have been guilty of an indictable offence according to the law for the time being of the United Kingdom.

(3) An offence under this section shall be a felony or misdemeanor according as the act committed outside the United Kingdom would have been a felony or misdemeanor if committed in England or Ireland.

The relation of the offence of receiving stolen goods to the stealing of them is so close that this Act has a very intimate connexion with extradition; it removes the necessity of extraditing the receiver. Moreover the reference to the law of the United Kingdom, making it the test of the stealing, has clearly been borrowed from the law of extradition. The principle is applied to this case thus. The property must be "stolen"

abroad, that is, "taken, extorted, obtained, embezzled, or disposed of." The point is not quite clear, but it is conceived that the reference to stealing abroad imports a criminality by the foreign law into the other acts for which the word "stolen" stands, and that the "taking," "obtaining," &c., must have been criminal. Then the circumstances in which the taking has occurred are to be judged by English law, and if it is also criminal by that law the offence of illegal possession is complete.

Chap. III.
Sec. VI.

SECTION VII.

The surrender of convicted persons.

Looking at the question of fugitives who have been convicted in the country from which they have escaped as an independent question, our own law and the arrangements made with foreign States do attempt in some measure to carry out the ideal which had been attributed to extradition. The highest expression of that ideal would be the surrender of convicted criminals for all crimes of whatever degree, due regard being paid to the prejudice in favour of political offenders. But the science of the subject being even now in its infancy, this was perhaps not to be expected, and the surrender of convicted fugitives has been subjected to the same list of extradition crimes as those who are only accused.

Surrender of
convicted persons
for extradition
crimes only.

The scheme of the Act throughout is to link accused and convicted fugitives together; and except with regard to a few details, the provisions apply to fugitive criminals "accused or convicted." As I have pointed out, this leads occasionally to difficulties or obscurities of interpretation—*e.g.*, the use of the words "try or punish" in s. 3 (1), and as to the evidence necessary for the issue of the warrant of apprehension of a person convicted. With regard, however, to the hearing, the second paragraph of s. 10 deals specially with convicted fugitives, and the question discussed in connexion with the issue of the warrant does not arise;—

cf. p. 49.

cf. p. 87.

In the case of a fugitive criminal alleged to have been convicted of an extradition crime, if such evidence is produced as (subject to the provisions of this Act) would, according to the law of England, prove that the prisoner was convicted of such crime, the police magistrate shall commit him to prison, but otherwise shall order him to be discharged.

Chap. III.
Sec. VII.

Proof of foreign
conviction.

The effect of this provision is that the fugitive is surrendered on proof of the foreign conviction, and no enquiry by the magistrate as to whether the evidence produced would have justified the conviction according to the law of England is sanctioned. The form of the conviction must be in accordance with the law of the country where it has taken place; but the proof of it is to be according to the law of England. This is governed by s. 14, which provides that "foreign certificates of or judicial documents stating the fact of conviction, may, if duly authenticated, be received in evidence" in extradition proceedings; and by s. 15, the certificate or judicial document is to be certified by an officer of the State where the conviction took place. In addition to this special provision, s. 15 allows all the documents referred to in it to be "authenticated in manner provided for the time being by law." This refers to s. 7 of Lord Brougham's Act (No. 2), the Law of Evidence Act of 1851, the provisions of which, so far as it concerns the present subject, are as follows;—

14 & 15 Vict.
c. 99.

Sealed copy of
judgment, &c.
to be received.

All judgments, decrees, orders, or other judicial proceedings of any Court of Justice in any foreign State, and all affidavits or other legal documents filed or deposited in any such Court, may be proved in any Court of Justice, either by examined copies or by copies authenticated as hereinafter mentioned; that is to say . . . the authenticated copy to be admissible in evidence must purport to be sealed either with the seal of the foreign Court to which the original document belongs, or, in the event of such Court having no seal, to be signed by the Judge, or, if there be more than one Judge, by any one of the Judges of the said Court; and such Judge shall attach to his signature a statement in writing on the said copy that the Court whereof he is Judge has no seal; but if any of the aforesaid authenticated copies shall purport to be sealed or signed as hereinbefore respectively directed, the same shall respectively be admitted in evidence in every case in which the original document could have been received in evidence, without any proof of the seal where a seal is necessary, or of the signature, or of the truth of the statement attached thereto, where such signature and statement are necessary, or of the judicial character of the person appearing to have made such signature or statement.

[So much of the
section as relates
to other
documents is
omitted.
The effect of
the section is
discussed in
Foreign Judgments,
Pt. I, pp. 85,
et seq.].

Sentence *par*
contumace.

But that must be a "conviction"; and therefore a foreign condemnation *par contumace*, that is, in default of appearance, will not come within the second paragraph of s. 10. It is provided by s. 26, that—

the terms "conviction" and "convicted" do not include or refer to a conviction which under foreign law is a conviction for contumacy, but the term "accused person" includes a person so convicted for contumacy.

Chap. III.
Sec. VII.

This provision is based on the decision in *re Coppin*, and is included in nearly all treaties. It was contended by the Crown that the Court ought to accept the condemnation without more. But Lord Chelmsford, C., held that he was only bound to accept it for what it was worth; and he gave it the same weight that it had by the law of France whence the fugitive had escaped. By that law a judgment *par contumace* is given by the Court without a finding by the jury; it is annulled if the person is subsequently arrested or surrenders himself, and he is then tried in the usual manner. He is in fact called the "accused" in the *Code d'Instruction Criminelle*; therefore he should be treated as a person accused for the purposes of extradition, and his case dealt with by the magistrate in the usual way.

re Coppin.
L.R. 2 Ch. App. 47.

In the recent case *ex parte Van der Auwera* the conviction in question was pronounced *par contumace* in Belgium. This fact does not appear to have been noticed; possibly because the Belgian treaty is one of the few which does not contain the clause above referred to.

ex p. Van der Auwera,
1907, 2 K.B. 157.

I must here revert to the criticism which I have ventured to make as to the enquiry into the foreign law on which the foreign warrant was issued in *Arton's case*. The examination of that part of the judgment shows that it is very doubtful whether it professed even to be referable to any provision in s. 10, and in fact there is none which justifies it. It was based on what were called the general principles of extradition. Now, seeing that throughout the Act accused and convicted fugitives are treated in the same way, it follows that if Arton had been convicted the same enquiry into the French law would have been held, unless the Court had said it could not be done in the face of the conviction. But this would mean that outside the Act there is a common law principle that a foreign judgment of conviction is entitled to recognition. But there is no such principle, only one which is precisely the opposite.

cf. p. 124.

The case of persons who have been convicted and fined does not seem to have been considered. It is, I think, clear that the fact that an offence is punishable by imprisonment or fine will not prevent the surrender of an accused person; and therefore,

Sentence of fine.

Chap. III.
Sec. VII.

cf. Foreign
Judgments,
Pt. I, p. 88.

*Huntington v.
Attrill*,
1893, A.C. 150,
cf. *ib.*, p. 90.

where the punishment is only a fine, such a person may also be surrendered, if the offence is extraditable. If, however, there has been a conviction and a fine imposed, the question is somewhat complicated by the fact that judgments which impose penalties cannot be sued upon in England; they come into the class of foreign judgments not recognised. There is no provision in the Act or the treaties excluding such sentences; it would therefore seem as if extradition were permissible in such a case, although the Civil Courts would not assist the foreign Government to recover the fine. It is difficult to imagine an extradition case in which the penalty had been imposed by a Civil Court; but if such a thing were possible, there is nothing in the Act which limits extradition to penalties imposed by the Courts of criminal jurisdiction. In this connexion the case of *Huntington v. Attrill* may be referred to with advantage; for that was a case in which a penalty was imposed by the law of New York on the officer of a public company for something which had a great affinity to fraud. The penalty there, however, was given to creditors, and was not enforceable by the State, and therefore the action on the New York judgment was sustained.

SECTION VIII.

Extradition offences by Statute.

Extradition
offences governed
by the law of
England.

The schedules of both the Acts, of 1870 and 1873, begin with the same formula:—

The following list of crimes is to be construed according to the law existing in England or in a British possession (as the case may be) at the date of the alleged crime, whether by common law or by statute made before or after the passing of this Act.

exp. Terraz,
4 Ex. D. 63,
cf. *ante*, p. 32.

The schedule of the Act of 1870 is generic. As was pointed out in *ex parte Terraz*, the offences are described in the broadest way possible, although a few are of necessity defined with a little more precision. But subject to this, all the law of England, whatever its nature may be, applicable to these offences governs extradition from the United Kingdom, and must be referred to in deciding whether any given crime is extraditable. Extradition from other parts of the Empire will be considered in a subsequent chapter.

The schedule of the Act of 1873, while it supplements the earlier schedule in many particulars, differs from it in many ways. In the first place, while it adds two general offences, it includes *en bloc* the offences defined in the five Criminal Law Consolidation Acts of 1861, which are not included in the schedule of 1870; and secondly, it is limited to those statutory offences which are indictable. This limitation does not apply to crimes which come within the schedule of 1870.

Chap. III.
Sec. VIII.

Special features
of schedule of
1873.

As to the meaning of "indictable offence," I venture to take the following from Archbold's "Criminal Practice."* An "indictment" is a written accusation of crime, made at the suit of the King, against one or more persons, and preferred to, and presented upon oath by, a Grand Jury; a "bill of indictment" is such written accusation before it is so presented. It is the ordinary common law remedy for all treasons and felonies, for misprisions of treason and felony, and for misdemeanors of a public nature.

* Indicable
offence."
* p. 1.

From this it follows that all those offences which by these Acts are put within the exclusive jurisdiction of the justices of the peace are not extradition crimes.

Again, the schedule of 1873 expressly includes Acts "amending or substituted for" the above five Acts, or, of course, any part of them. The expression "substituted" may, I think, legitimately be said to include additions to the law dealing with any given offence, even though there is no express amendment of the existing law in the new statute.

This consideration does not apply to the schedule of 1870; the offences are there described generically, and subsequent legislation is expressly referred to in the introductory paragraph.

It would not be practicable to give a detailed list of crimes under different statutes and the common law which fall within the schedules, for that would entail a summary of the criminal law of England. But it will be convenient for purposes of reference, more especially to foreign readers, to give a brief summary of the crimes contained in the Acts of 1861, because the lists of crimes in the treaties often include crimes which are dealt with specifically in those Acts. A more detailed account of subsequent amendments of the law is given because subsequent legislation may not always be easily accessible. It will be understood, however, that the list is for reference merely, and does not profess either to be exhaustive, or to include anything but the broad features of the definitions of the crimes.

- Chap. III.
Sec. VIII.
- Attempts. Attempts to commit indictable offences are not always themselves indictable; if they are not, in the case of offences under the Acts of 1861, they are not extraditable offences. For example, "injuries to electric or magnetic telegraphs" are indictable offences under s. 37 of the Malicious Damage Act, 1861; but "attempts to injure such telegraphs" are, by s. 38, put within the jurisdiction of the justices.
- 24 & 25 Vict.
c. 97.
- Second offences. Second offences are sometimes specially punished; and there are cases where the second offence is indictable, although the first is not (*e.g.* stealing dogs, by s. 18 of the Larceny Act, 1861). With regard to them, there can be no difficulty. Second and subsequent offences are nearly always specially treated in continental Codes. In France the generic term for them is *récidive*, § and the for criminal *récidiviste*.
- 24 & 25 Vict.
c. 96.

OFFENCES UNDER THE SCHEDULE OF 1870.

Murder, and attempt and conspiracy to murder.

Manslaughter.

Counterfeiting and altering money and uttering counterfeit or altered money.

Forgery, counterfeiting, and altering, and uttering what is forged or counterfeited or altered.

Embezzlement and larceny.

Obtaining money or goods by false pretences.

Crimes by bankrupts against bankruptcy law.

Fraud by a bailee, banker, agent, factor, trustee, or director, or member, or public officer of any company made criminal by any Act for the time being in force.

Rape.

Abduction.

Child-stealing.

Burglary and house-breaking.

Arson.

Récidive.

§ *Récidive* is treated generically in the Mauritius Penal Code thus;—

13.—When any person,

(a) commits a crime within the 10 years next following a conviction for a crime; or

(b) commits a misdemeanor within the 5 years next following a conviction for a crime; or

(c) commits a misdemeanor within the 5 years next following a condemnation to imprisonment for one year or more for a misdemeanor—

the Court in passing sentence shall take into consideration the previous conviction or condemnation, and may inflict a penalty exceeding by one third the maximum penalty fixed for such crime or misdemeanor.

Robbery with violence.

Threats by letter or otherwise with intent to extort.

Piracy by [the] law of nations.

Sinking or destroying a vessel at sea, or attempting or conspiring to do so.

Assaults on board a ship on the high seas with intent to destroy life or to do grievous bodily harm.

Revolt or conspiracy to revolt by two or more persons on board a ship on the high seas against the authority of the master.

Chap. III.
Sec. VIII.

OFFENCES UNDER THE SCHEDULE OF 1873.

The following generic offences are added:—

Kidnapping or false imprisonment.

Perjury, or subornation of perjury, whether under common or statute law;

The schedule then adds indictable offences under the Criminal Law Consolidation Acts, 1861, not included in the schedule of 1870, or under any Act amending or substituted for the same; and also indictable offences under the bankruptcy law, not included in the schedule of 1870.

24 & 25 Vict.
cc. 96—100.

OFFENCES UNDER THE LARCENY ACT, 1861.

Fraudulent conversion of property by bailees (s. 3).

Simple larceny (s. 4).

Larceny of cattle or other animals (ss. 10-13).

Resisting keepers in the execution of their duty (s. 16).

Stealing dogs, second offence (s. 18).

Corruptly taking money to restore dogs (s. 20).

Stealing or dredging for oysters in oyster fisheries (s. 26).

larceny.
24 & 25 Vict. c. 96.

Larceny of written instruments.

Stealing, or fraudulently destroying, cancelling, or obliterating, the whole or any part of any valuable security, other than a title to lands (s. 27).

„ „ or concealing, the whole or any part of any document of title to lands (s. 28); or any will, codicil, or other testamentary instrument (s. 29).

Stealing or fraudulently taking from its place of deposit for the time being, or from any person having the lawful custody thereof; or unlawfully or maliciously cancelling, obliterating, injuring, or destroying, the whole or any part of any record,

Chap. III.
Sec. VIII.

Larceny.
24 & 25 Vict. c. 96.

writ, or other official document relating to any process of law, or of any original document in anywise relating to the business of a public office, &c. (s. 30).

Larceny of things attached to or growing on land.

Stealing, ripping, cutting, severing, or breaking, with intent to steal, metal, glass, or wood fixed to house or land (s. 31); trees in pleasure grounds or elsewhere (s. 32); trees, shrubs, whatsoever growing—third offence (s. 33); fruit or vegetable produce in a garden—second offence (s. 36).

Larceny from mines.

Stealing, or severing with intent to steal, metal, ore, or coal (s. 38.)

Miners removing ore with intent to defraud (s. 39).

Larceny from the person.

Robbing any person, or stealing any chattel, money, or valuable security from the person of another (s. 40).

Assault with intent to rob (s. 42).

Robbery or assault by a person armed, or by two or more, or robbery and wounding (s. 43).

Sending, delivering, or uttering, or directly or indirectly causing to be received, knowing the contents thereof, any letter demanding with menaces and without reasonable or probable cause, any property, chattel, money, valuable security, or other valuable thing (s. 44).

Demanding money, &c., with menaces or by force, with intent to steal (s. 45).

Sending, &c., any letter threatening to accuse any other person of crime, with intent to extort (s. 46).

Accusing or threatening to accuse, with intent to extort (s. 47).

Inducing a person by violence or threats to execute deeds, &c., with intent to defraud (s. 48).

Sacrilege, burglary, and house-breaking.

Breaking and entering a church or chapel, and committing any felony, &c. (s. 50).

Entering a dwelling-house with intent to commit a felony, or being in a dwelling-house committing a felony, and breaking out (s. 51).

Burglary (s. 52).

Entering a dwelling-house at night with intent to commit felony (s. 54).

Breaking into a building within the curtilage not part of the dwelling-house, and committing a felony, &c. (s. 55).

Breaking into a house, shop, warehouse, &c., and committing a felony (s. 56).

Breaking and entering a house, church, &c., or any building within the curtilage, with intent to commit a felony (s. 57).

Being armed with intent to break or enter a house at night, or having at night any implement of house-breaking, or being found disguised, with intent to commit a felony, or being found by night in any dwelling-house, with intent to commit a felony therein (s. 58).

Stealing in a dwelling-house any chattel, money or valuable security [including postal orders—43 & 44 Vict. c. 33, s. 4 (4)], to the value of £5 (s. 60); with menaces and threats (s. 61).

Stealing goods in process of manufacture (s. 62).

Stealing from ships, docks, wharves (s. 63); from ships in distress (s. 64).

Larceny or embezzlement by clerks, servants, and others.

Larceny by clerks or servants of any chattel, money, or valuable security, belonging to or in the possession or power of the master or employer (s. 67).

Embezzlement by clerks or servants (s. 68).

Larceny or embezzlement by persons in the King's service, or by the police (ss. 69, 70).

Embezzlement by officers of the Banks of England or Ireland (s. 73).

Stealing by tenant or lodger of any chattel or fixture let with the house or lodgings (s. 74).

31 & 32 Vict. c. 116.

(Larceny Act, 1868. To amend the law relating to larceny and embezzlement).

If any person, being a member of any copartnership or being one of two or more beneficial owners of any money, goods or effects, bills, notes, securities, or other property, shall steal or embezzle any such money &c., he shall be liable to be tried as if he had not been or was not a member of such copartnership or one of such beneficial owners,

Chap. III.
Sec. VIII.

Larceny.
24 & 25 Vict. c. 96.

Chap. III.
Sec. VIII.

Frauds by agents, bankers, or factors.

1 *Edw. VII, c. 10.*

Larceny.
24 & 25 Vict. c. 96.

(Larceny Act, 1901. To amend the Larceny Act, 1861; and repealing ss. 75 and 76).

1.—Whosoever—

(a) being entrusted, either solely or jointly with any other person, with any property, in order that he may retain in safe custody or apply, pay or deliver, for any purpose or to any person, the property or any part thereof or any proceeds thereof; or

(b) having, either solely or jointly with any other person, received any property for or on account of any other person, fraudulently converts to his own use or benefit, or the use or benefit of any other person, the property or any part thereof or any proceeds thereof, shall be guilty of a misdemeanor. . . .

(2) Nothing in this section shall apply to or affect any trustee on any express trust created by a deed or will, or any mortgagee of any property, real or personal, in respect of any act done by the trustee or mortgagee in relation to the property comprised in or affected by any such trust or mortgage.

Persons under powers of attorney fraudulently selling property (s. 77).

Factors obtaining advances on the property of their principals (s. 78).

Trustees fraudulently disposing of property (s. 80).

Directors, members, or public officers of any body corporate or public company, fraudulently appropriating property (s. 81); or keeping fraudulent accounts (s. 82); or wilfully destroying books, &c. (s. 83); or publishing fraudulent statements (s. 84).

38 & 39 *Vict. c. 24.*

(Falsification of Accounts Act, 1875; to be read as one with the Larceny Act, 1861).

1.—If any clerk, officer, or servant, or any person employed or acting in the capacity of a clerk, officer, or servant, shall wilfully and with intent to defraud, destroy, alter, mutilate, or falsify any book, paper, writing, valuable security, or account which belongs to or is in the possession of his employer, or has been received by him for or on behalf of his employer, or shall wilfully and with intent to defraud make or concur in making any false entry in, or omit or alter, or concur in omitting or altering, any material particular from or in such book, or any document or account, then in every such case the person so offending shall be guilty of a misdemeanor. . . .

Obtaining money, &c. by false pretences.

Chap. III.
Sec. VIII.

- Obtaining by false pretences any chattel, money, or valuable security, with intent to defraud (s. 88).
 Causing or procuring by false pretences money to be paid, or chattels or valuable securities to be delivered to any other person, with intent to defraud (s. 89).
 Inducing persons by fraud to execute deeds or other instruments (s. 90).

Larceny.
24 & 25 Vict. c. 96.

Receiving stolen goods.

- Receiving chattels, money, or valuable securities, knowing the same to have been feloniously taken, extorted, obtained, embezzled or disposed of, where the taking, &c., amounts to a felony (s. 91); where it amounts to a misdemeanour (s. 95).
 Taking a reward for helping to the recovery of stolen property without bringing the offender to trial (s. 101).

59 & 60 Vict. c. 52.

(Larceny Act, 1896. To amend the law with respect to the jurisdiction exercisable in cases relating to the receipt or possession of stolen property; to have effect as part of the Larceny Act, 1861).

7.—(1) If any person without lawful excuse receives, or has in his possession, any property stolen outside the United Kingdom, knowing such property to have been stolen, he shall be liable to penal servitude. . . .

(2) For the purposes of this section property shall be deemed to have been stolen where it has been taken, extorted, obtained, embezzled, converted, or disposed of, under such circumstances that, if the act had been committed in the United Kingdom, the person committing it would have been guilty of an indictable offence according to the law for the time being of the United Kingdom.

(3) An offence under this section shall be a felony or misdemeanour according as the act committed outside the United Kingdom would have been a felony or misdemeanour if committed in England or Ireland.

Offences under the Act committed within the jurisdiction of the Admiralty (s. 115).

Chap. III.
Sec. VIII.

OFFENCES UNDER THE MALICIOUS DAMAGE ACT, 1861.
(MALICIOUS INJURIES TO PROPERTY).

Malicious Damage.
24 & 25 Vict c. 97.

Setting fire to buildings, or goods therein (ss. 1-7); or attempts (s. 8).

Destroying or damaging a building with gunpowder, any person being therein (s. 9); or attempts (s. 10).

Injuries to buildings by rioters (ss. 11, 12).

Malicious injuries to buildings by tenants (s. 13).

Injuries to manufactures, machinery, &c. (ss. 14, 15).

Injuries to corn, trees, and vegetable productions (ss. 16-21).

Setting fire to a coal mine (s. 26); or attempts (s. 27).

Conveying water into any mine, obstructing the shaft, airway, &c. (s. 28).

Damaging steam engines, buildings, or other things for working mines, (s. 29).

Destroying sea-banks, or canal walls, &c. (s. 30).

Removing piles of sea-banks, or doing damage to obstruct the navigation of a river or canal (s. 31).

Breaking down the dam of a fish-pond or private fishery, or poisoning water with intent to destroy fish (s. 32).

Extended to salmon rivers, by 36 & 37 Vict.
c. 71, s. 13.

Injuring a public bridge, viaduct, &c. over or under a highway, railway, or canal (s. 33).

Destroying turnpike gate, tool-house, &c. (s. 34).

Injuries to railway carriages and telegraphs.

Placing wood on railway, hiding signals, and other acts with intent to obstruct or overthrow any engine, &c. (s. 35).

Obstructing engines or carriages on railways (s. 36).

Injuring telegraphs (s. 37).

Destroying or damaging works of art in museums, churches, or public places (s. 39).

Injuries to cattle or other animals (ss. 40, 41).

Injuries to ships.

Setting fire to the or casting away, or destroying a ship (s. 42); with intent to prejudice the owner or underwriter (s. 43); or attempts (s. 44).

Placing gunpowder near a ship with intent to damage it (s. 45).

Damaging ships otherwise than by fire or explosion (s. 46).

- Exhibiting false signals with intent to bring a ship into danger;
 or maliciously doing anything tending to the immediate
 loss or destruction of a ship, for which no punishment is
 specially provided (s. 47). Chap. III.
Sec. VIII.
- Removing or concealing buoys or other sea-marks (s. 48).
- Destroying wrecks or articles belonging thereto (s. 49).
- Sending letters threatening to burn or destroy houses, buildings,
 ships, &c. (s. 50).
- Malicious injuries to property, public or private, exceeding £5 in
 value, not otherwise provided for (s. 51).
- Making or having gunpowder, &c., with intent to commit or
 enable any person to commit any felony mentioned in the
 Act (s. 54).
- Doing any of the acts made penal by the Act with intent to
 injure or defraud any other person, although the offender
 is in possession of the property (s. 59).

Malicious Damage.
24 & 25 Vict. c. 97.

Offences under the Act committed within the jurisdiction of the
 Admiralty (s. 72).

Offences under the Post Office Protection Act, ^{47 & 48 Vict.}
 1884, will be considered later. _{c. 76.}

OFFENCES UNDER THE FORGERY ACT, 1861.

Forgery.
24 & 25 Vict. c. 98.

- Forging the Seals of State (s. 1).
- Forging transfers of stock, powers of attorney relating thereto;
 and other offences connected therewith (ss. 2-5).
- Making out false dividend warrants (s. 6).
- Forging East India bonds (s. 7).
- Forging, and other offences connected with Exchequer bills, &c.
 (ss. 8-11).
- These sections extended to Treasury bills, by
 40 & 41 Vict. c. 2, s. 40; and to War bonds, by
 63 & 64 Vict. c. 2, s. 4 (3).
- Forging bank notes, and other offences connected with there
 (ss. 12, 13).
- Making and engraving plates, &c. for bank notes (ss. 14-18).
- Engraving plates for foreign bills, &c. (s. 19).
- Forging deeds, wills, bills of exchange, orders or receipts for
 money or goods, &c. (ss. 20-23).
- Making or accepting a bill by procuration without authority
 (s. 24).

Chap. III.
Sec. VIII.

Obliterating the crossing on cheques (s. 25).

Extended to "any document issued by a customer of any banker, and intended to enable any person or body corporate to obtain payment from such banker of the sum mentioned in such document," by 46 & 47 Vict. c. 55, s. 17.

Forging and other offences relating to records of Courts (ss. 27-32).

Forging the name of the Accountant General (s. 33).

Acknowledging recognizances in the name of another (s. 34).

Forging or uttering marriage licences or certificates (s. 35).

Destroying, injuring, forging, or falsifying registers, or copies, of births, baptisms, marriages, deaths, or burials (s. 36).

Making false entries in copies of registers of baptisms, &c. (s. 37).

Demanding property upon forged instruments, or probates obtained on forged wills (s. 38).

Forging any instrument however designated, which is in law a will, deed, bill of exchange, &c. (s. 39).

Forging in England or Ireland documents made abroad, or payable abroad (s. 40).

Offences under the Act committed within the jurisdiction of the Admiralty (s. 50).

Coinage Offences.
24 & 25 Vict. c. 99.

OFFENCES UNDER THE COINAGE ACT, 1861.

Gold and Silver Coinage.

Counterfeiting the coin of the realm (s. 2).

Colouring counterfeit coin, or pieces of metal, with intent (s. 3).

Impairing or lightening coin with intent (s. 4).

Unlawful possession of clippings of coin (s. 5).

Buying or selling counterfeit coin for lower value (s. 6).

Importing counterfeit coin from abroad (s. 7); exporting (s. 8).

Uttering and possession of counterfeit coin (ss. 9-12).

Uttering foreign coin with intent (s. 13).

Counterfeiting and other offences with regard to copper coin (ss. 14-15).

Defacing any coin (s. 16).

Counterfeiting and other offences with regard to foreign gold and silver coin (ss. 18-23).

Making, having, &c. coining tools (s. 24).

Conveying coining tools or coin out of the Mint without authority (s. 25).

Chap. III.
Sec. VIII.

Offences under the Act committed within the jurisdiction of the Admiralty (s. 36).

Coinage Offences.
24 & 25 Vict. c. 99.

OFFENCES AGAINST THE PERSON ACT, 1861.

Offences against
the Person,
24 & 25 Vict. c. 100.

Murder (s. 1).

Conspiring or soliciting to commit murder (s. 4).

Manslaughter (s. 5).

Murder or manslaughter abroad (s. 9).

Provision for the trial of murder and manslaughter where the death or cause of death only happens in England or Ireland (s. 10).

Administering poison or wounding with intent to murder (s. 11).

Destroying or damaging a building with gunpowder with intent to murder (s. 12).

Setting fire to or casting away a ship (s. 13).

Attempting to administer poison, or shooting or attempting to shoot or attempting to drown, &c. (s. 14).

Attempting to commit murder by any other means (s. 15).

Sending letters threatening to murder (s. 16).

Acts causing or tending to cause danger to life or bodily harm.

Impeding a person endeavouring to save himself or another from shipwreck (s. 17).

Shooting or attempting to shoot, or wounding with intent to do grievous bodily harm, or to resist apprehension (s. 18).

Inflicting bodily injury with or without a weapon (s. 20).

Attempting to choke, &c. in order to commit or assist in the committing of any indictable offence (s. 21).

Using chloroform, &c., in order „ „ (s. 22).

Maliciously administering poison, &c., so as to endanger life or inflict grievous bodily harm (s. 23); with intent to injure, aggrieve, or annoy any other person (s. 24).

Not providing apprentices or servants with food, &c., or doing bodily harm whereby their life is endangered or health is permanently injured (s. 26).

Exposing a child under the age of 2 years, whereby its life is endangered, or its health has been or is likely to be permanently injured (s. 27).

Chap. III.
Sec. VIII.

Offences against
the Person.
24 & 25 Vict. c. 100.

* 4 Edw. VII,
c. 15.

The Prevention of Cruelty to Children Act, 1904,* introduced a number of new offences in respect to children. In many of the sections they are linked on with offences under ss. 27, 55, and 56, of the Act of 1861, and may therefore be looked on as additions to those sections. The following is made an indictable offence by s. 1 ;—

If any person over the age of 16 years, who has the custody, charge, or care of any child under the age of 16, wilfully assaults, ill-treats, neglects, abandons or exposes such child, or causes or procures such child to be assaulted, neglected, abandoned, or exposed, in a manner likely to cause such child unnecessary suffering or injury to its health (including injury to or loss of sight or hearing or or limb or organ of the body and any mental derangement), he is to be guilty of the offence of cruelty.

Offences against the provisions of the Act restricting the employment of children are not indictable.

Causing bodily injury by gunpowder (s. 28).

Causing gunpowder to explode, or sending to any person an explosive substance, or throwing corrosive fluid on a person with intent to do grievous bodily harm (s. 29).

Placing gunpowder near a dwelling, &c., with intent to do bodily injury to any person (s. 30).

Setting spring-guns, &c., with intent to inflict grievous bodily harm (s. 31).

Placing wood, &c., on a railway, taking up rails, turning points, showing or hiding signals, &c., with intent to endanger passengers (s. 32).

Casting stones, &c., upon a railway carriage, with intent to endanger the safety of any person therein or in any part of the train (s. 33).

Doing or omitting anything so as to endanger passengers by railway (s. 34).

Furious driving causing injury (s. 35).

Assaults.

Obstructing or assaulting a minister in the discharge of his duties (s. 36).

Assaulting a magistrate or other person on account of his preserving wreck (s. 37).

Assault with intent to commit felony, or on peace officers, &c., (s. 38); with intent to obstruct the sale of grain or its free passage (s. 39).

Assaults on seamen (s. 40).

Assaults arising from combination or conspiracy to raise the rate of wages, &c., were dealt with by s. 41, as indictable offences. This is now repealed and replaced by 34 & 35 Vict. c. 32, "to amend the criminal law relating to violence, threats, and molestation." The Act creates many new offences, but they are no longer indictable offences.

Chap. III.
Sec. VIII.

Offences against
the Person,
24 & 25 Vict. c. 100

It is not very clear whether the Conspiracy and Protection of Property Act, 1875, and properly be said to be an addition to, or in substitution for, any of the provisions of the Act of 1861.

Common assault, and assault occasioning bodily harm (s. 47).
Rape (s. 48).

Defilement of girls.

This subject was dealt with in the Act of 1861, in ss. 49 to 51; of these, ss. 50 and 51 were repealed by the Act of 1875, and this Act, together with s. 49, were repealed by the Criminal Law Amendment Act, 1885. In view of the questions which may be raised in connexion with extradition, it is necessary to follow these repeals carefully.

Act of 1861.

The offence under s. 49 was, procuring any woman or girl under 21 to have illicit carnal connexion with any man, by false pretences, false representations, or other fraudulent means. Under s. 50, the offence was carnally knowing a girl under 10 years of age; and under s. 51, it was carnally knowing a girl between the ages of 10 and 12.

Act of 1875.

These offences were altered to, carnally knowing and abusing a girl under 12 years, and carnally knowing and abusing a girl above the age of 12 and under 13, whether with or without her consent.

Act of 1885.

The offences were greatly elaborated, and dealt with both procurement and defilement. They were defined as follows:—

Procuring any girl or woman under 21, not being a common prostitute or of known immoral character, to have unlawful carnal connexion with any other person, either within or without the dominions; or attempts [s. 2 (1)].

Procuring any woman or girl to become, either within or without the dominions, a common prostitute; or attempts [s. 2 (2)].

Procuring any woman or girl to leave the United Kingdom, with intent that she may become an inmate of a brothel elsewhere; or attempts [s. 2 (3)].

Chap. III.
Sec. VIII.

Offences against
the Person,
24 & 25 Vict. c. 100.

Procuring any woman or girl to leave her usual place of abode in the United Kingdom (not being a brothel), with intent that she may, for the purposes of prostitution, become an inmate of a brothel within or without the dominions; or attempts [s. 2 (4)].

By threats or intimidation procuring or attempting to procure any woman or girl to have any unlawful carnal connexion, either within or without the dominions [s. 3 (1)].

By false pretences or false representations procuring any woman or girl, not being a common prostitute or of known immoral character, to have unlawful carnal connexion, either within or without the dominions [s. 3 (2)].

Applying, administering to, or causing to be taken by any woman or girl any drug, matter or thing, with intent to stupefy or overpower so as thereby to enable any person to have unlawful carnal connexion with such woman or girl [s. 3 (3)].

Unlawfully and carnally knowing any girl under the age of 13; or attempts [s. 4].

The evidence of the girl may be received, though not given on oath, if she is possessed of sufficient intelligence to justify it, and understands the duty of speaking the truth; but her evidence must be corroborated by some other material evidence.

Personating a woman's husband in order to induce her to permit him to have connexion with her, is rape [s. 4, last paragraph].

Unlawfully and carnally knowing any girl of or above the age of 13, and under the age of 16; and attempts [s. 5 (1)].

Unlawfully and carnally knowing any female idiot or imbecile woman or girl, under circumstances which do not amount to rape, but which prove the offender knew at the time that she was an idiot or imbecile; attempts [s. 5 (2)].

It is a defence if it is shewn that the person charged had reasonable cause to believe that the girl was of or above the age of 16.

No prosecution to be commenced more than 6 months after the commission of the offence [4 Edw. VII, c. 15, s. 27].

The other offences created by this statute are,

The owner or occupier of premises permitting the defilement of a girl under the age of 13; or of or above the age of 13 and under 16 [s. 6].

It is a defence if it appears that the person charged had reasonable cause to believe that the girl was of or above the age of 16.

Abduction of an unmarried girl under the age of 18, with

with intent to have carnal knowledge [s. 7].

It is a defence if it appears that the person charged had reasonable cause to believe that the girl was of or above the age of 18.

Unlawfully detaining any woman or girl against her will in any brothel; or in any premises with intent that she may be unlawfully or carnally known by any man, in particular or generally [s. 8].

Outrages on decency in public or private [s. 11].

Indecent assault upon a female (s. 52).

Attempts to carnally know a girl under 12, repealed by 48 & 49 Vict. c. 69.

Abduction of a woman against her will from motives of lucre; fraudulent abduction of a girl under 21 against the will of her father (s. 53).

Forcible abduction of any woman, with intent to marry or carnally know her, or to cause her to be married (s. 54).

Abduction of a girl under 16 (s. 55).

Child-stealing, or receiving stolen child (s. 56).

[With regard to these last two offences, see *4 Edw. VII, c. 15*, the Prevention of Cruelty to Children Act, 1904, referred to under s. 27.] *cf. p. 142.*

Bigamy (s. 57).

The offence is thus defined—"Whosoever, being married, shall marry any other person during the life of the former husband or wife, whether the second marriage shall have taken place in England or Ireland or elsewhere. . . ."

Administering drugs or using instruments to procure abortion (s. 58); procuring drugs, &c., to procure abortion (s. 59).

Concealing the birth of a child (s. 60).

Sodomy and bestiality (s. 61); attempts, &c., (s. 62).

Making gunpowder, &c., with intent to commit or enable any person to commit any felony under the Act (s. 64).

Offences under the Act committed within the jurisdiction of the Admiralty (s. 68).

Bribery was added to the schedule in 1906. In the treaty with the United States it is defined, in accordance with the common law, to be "the offering, giving, or receiving of bribes." The offence covers a large area in English law and includes bribery of public officials, of judicial officers, of or by members or officers of public bodies, and also bribery at elections under the Corrupt and Illegal Practices Prevention Act, 1883.

46 & 47 Vict. c. 51.

Chap. III.
Sec. VIII.

Offences against
the Person.
24 & 25 Vict. c. 100.

Chap. III.
Sec. VIII.

OFFENCES UNDER THE LAW OF BANKRUPTCY.

Bankruptcy
Offences.

As this addition to the schedule of 1873 has the effect of making all crimes against the law of bankruptcy extraditable, it has been thought more convenient to group all of them together. The following are made offences by bankrupts, by s. 11 of the Debtors Act, 1869, under the title of "Punishment of Fraudulent Debtors."

- i.* Failure to make full discovery.
- ii.* Failure to deliver up property.
- iii.* Failure to deliver up books, &c.
- iv.* Concealment of property or debts.
- v.* Removal of property.
- vi.* Omission in statements.
- vii.* False debts, failure to inform trustee of.
- viii.* Preventing the production of books, &c.
- ix.* Concealment, mutilation, falsification, &c., of books, &c.
- x.* False entries.
- xi.* Parting with, altering books, &c.
- xii.* Fictitious losses.
- xiii.* Obtaining credit on false representations.
- xiv.* Trader obtaining credit on false pretence of carrying on business.
- xv.* Trader pawning, pledging, &c., property obtained on credit.
- xvi.* Obtaining consent of creditors by false representation.

By s. 13, the following are made offences by "any person;"—

- i.* If in incurring any debts or liability he has obtained credit under false pretences, or by means of any other fraud.
- ii.* If he has, with intent to defraud his creditors, or any of them, made or caused to be made any gift, delivery, for transfer of, or any charge on his property.
- iii.* If he has with intent to defraud his creditors, concealed or removed any part of his property since or within 2 months before the date of any unsatisfied judgment or order for payment of money obtained against him.

(by s. 12) Absconding with property.

(by s. 31 of the Act of 1883) Obtaining credit to the extent of £20, by an undischarged bankrupt.

By s. 14 of the Debtors Act, the following is made an offence by creditors;—

Making a false claim, proof, declaration, or statement of account untrue in any material particular, with intent to defraud.

32 & 33 Vict.
c. 62.

46 & 47 Vict.
c. 52.

Offences against the Slave Trade Act 1873, and the Acts with which it is to be construed as one, are by s. 27 of that Act, deemed to be inserted in the schedule of the Extradition Act of 1870.

Chap. III.
Sec. VIII.

Slave Trade
Offences.
35 & 37 Vict. c. 88.

The offences under the Slave Trade Act, 1824, § are the following—

Acts declared unlawful and subject to pecuniary penalties or forfeitures.

- Purchasing, selling or contracting, &c., for slaves (s. 2).
- Dealing in slaves or exporting or importing them (s. 3).
- Fitting out slave ships (s. 4).
- Embarking capital in the slave trade (s. 5).
- Guaranteeing slave adventures (s. 6).
- Shipping goods to be employed in the slave trade (s. 7).
- Insuring slaves or slave adventures (s. 8).

Acts declared unlawful and subject to imprisonment, &c.

- Dealing in slaves on the high seas, deemed to be piracy, felony and robbery (s. 2).
- Dealing in or importing slaves (s. 10).
- Serving on slave ships (s. 11).

By the Slave Trade Act, 1843, the Act of 1824 was made 6 & 7 Vict. c. 98. applicable to all British subjects wherever residing.

ACCESSORIES.

The liability of accessories to be surrendered is governed by s. 3 of the Act of 1873, which is as follows.

Accessories.

Whereas a person who is accessory before or after the fact, or counsels, procures, commands, aids, or abets the commission of any indictable offence, is by English law liable to be tried and punished as if he were the principal offender, but doubts have arisen whether such person as well as the principal offender can be surrendered under the principal Act, and it is

§ Section 27 of the Act of 1873, is as follows :

Offences committed against this Act or the Acts with which this Act is to be construed as one or otherwise in connexion with the slave trade, whether committed on the high seas or on land, or partly on the high seas or partly on land, shall be deemed to be inserted in the first schedule to the Extradition Act, 1870, and that Act, and any Act amending the same, shall be construed accordingly.

The following sections of the Slave Trade Act, 1824 (5 Geo. IV, c. 113), are not repealed:—ss. 2 to 11, 12 in part, 39, 40 and 47. The Slave Trade Act, 1843, (ss. 1 and 4,) is still in force.

Chap. III.
Sec. VIII.

expedient to remove such doubts; it is therefore declared that—

Accessories.

Every person who is accused or convicted of having counselled, procured, commanded, aided, or abetted the commission of any extradition crime, shall be deemed for the purposes of the principal Act and this Act to be accused or convicted of having committed such crime, and shall be liable to be apprehended and surrendered accordingly.

re Counhaye.
L.R. 8 Q.B. 410.

This provision was introduced into the amending Act in consequence of the decision in *re Counhaye*. The surrender of a woman was demanded by Belgium for complicity in the fraudulent bankruptcy of her husband. Like the schedule to the Act of 1870, the Belgian treaty only contained "offences by bankrupts against the bankruptcy law" among the extraditable offences. But there was in the treaty a provision that persons accused as principals or accessories before the fact of any of the crimes specified should be surrendered. The Court held that as to many of the crimes included in the list, accessories before the fact would be included, because they are now liable to be indicted as principals, and were always liable to be punished as principals. Therefore in the case of the simple crimes described in general terms, accessories before the fact could have been surrendered; but they could not have been surrendered where the person committing it was specified in the definition of the crime, as in the case of these bankruptcy offences. The surrender was therefore refused. But later in the same year, the Act was passed to remove doubts, and accessories before the fact are now included among persons liable to be surrendered.

The Act further introduced the amendment as to bankruptcy offences, making the definition wider so as to include offences by others than bankrupts; and also made the Act of 1870 applicable to crimes committed before its passing.

24 & 25 Vict.
c. 94.

The law as to accessories is contained in the Accessories and Abettors Act, 1861.

As to accessories before the fact to any felony, they may be tried and punished as principals (s. 1).

Any person counselling, procuring or commanding any other person to commit any felony, is guilty of felony, and may be indicted either as an accessory before the fact, together with the principal felon, or after the conviction of the principal felon, or for a substantive felony, whether the principal felon shall have been previously convicted or not, or whether he is amenable to justice or not (s. 2).

As to accessories after the fact, to any felony, they may be indicted either as accessories after the fact, together with the principal felon, or after the conviction of the principal felon, or for a substantive felony, whether the principal felon shall have been previously convicted or not, or whether he is amenable to justice or not (s. 3). A special punishment is provided by (s. 4).

Chap. III.
Sec. VIII.

Accessories.
24 & 25 Vict. c. 94.

As to accessories generally, if the principal offender has been in anywise convicted of felony, they may be proceeded against although the principal felon shall die or be pardoned or otherwise delivered before attainder (s. 5).

As to abettors in misdemeanours, persons aiding, abetting, counselling, or procuring the commission of a misdemeanour, shall be liable to be tried as a principal offender (s. 8).

If any person within the jurisdiction of the Admiralty becomes an accessory to a felony, whether it is committed within that jurisdiction or elsewhere, or is begun within that jurisdiction and completed elsewhere, or is begun elsewhere and completed within that jurisdiction, the offence of such person shall be a felony (s. 9).

Further, there is in all the Criminal Law Amendment Acts of 1861, a section dealing with accessories; the following, in the Offences against the Person Act, is typical.

24 & 25 Vict. c. 100, s. 67.

In the case of every felony punishable under this Act, every principal in the second degree, and every accessory before the fact, shall be punishable in the same manner as the principal in the first degree is by this Act punishable; and every accessory after the fact to any felony punishable under this Act (except murder) shall be liable to be imprisoned for any term not exceeding 2 years, with or without hard labour; and every accessory after the fact to murder shall be liable, at the discretion of the Court, to be kept in penal servitude for life . . . and whosoever shall counsel, aid, or abet the commission of any indictable misdemeanor punishable under this Act shall be liable to be proceeded against, indicted, and punished as a principal offender.

As Sir Edward Clarke points out,* the preamble to s. 3 of the Act of 1873, contains the inaccurate statement that an accessory after the fact is liable to be tried and punished as if he were the principal offender, and the section provides that in the case of an extradition crime he is to be "deemed to be accused or convicted of having committed such crime." By s. 4 of 24 & 25 Vict. s. 94, and the sections in the Acts of 1861, an accessory after the fact is subject to a special punishment.

* Extradition,
p. 257.

Accessories after
the fact.

SECTION IX.

The Committal and Surrender, or Discharge.

The committal or
discharge, [s. 10].

We now come to the last stage of the proceedings, the committal of the fugitive by the magistrate, followed by the surrender by the Secretary of State, or his discharge. The hearing and committal or discharge are combined in s. 10, and for the purpose of appreciating the nature of this provision in its reference to the close of the proceedings, it must be restated. If "such evidence is produced as (subject to the provisions of this Act) would, according to the law of England, justify the committal for trial of the prisoner if the crime of which he is accused had been committed in England," the magistrate is to commit the fugitive to prison, "but otherwise shall order him to be discharged." No further reference to fugitives who have been convicted is necessary.

11 & 12 Vict.
c. 42.

The English principle governing discharge or committal for trial is governed by s. 25 of the Indictable Offences Act, 1848, which provides that the accused party—(i), is to be discharged if the justice is of opinion that the evidence "is not sufficient to put such accused party upon his trial;" and, (ii), is to be committed for trial, (a), if the justice of the peace is of opinion that the evidence is sufficient to put such accused party upon his trial; or (b), if the evidence raises "a strong or probable presumption of the guilt of such accused party."

Without pausing to consider the somewhat subtle differences of language in the two parts of the sentence governing committal for trial, it may be taken that if the evidence is "sufficient" to put the fugitive on his trial had the crime been committed in England, (which includes the case of evidence raising "a strong or probable presumption" of his guilt), he will be committed to prison to await his surrender.

Meaning of
"if the crime had
been committed
in England"
considered.

It is at this point that what has already been said as to the true nature of an extradition crime takes a practical shape. What is the crime of which the magistrate is to take cognizance? What is the meaning of the sentence "if the crime of which the fugitive is accused had been committed in England?" This raises again the questions which have been so much discussed in the preceding pages, and I do not propose to revert to them

in any detail; but it will be convenient to examine a little more closely the proposition advanced on p. 126, that the English proceedings for extradition are auxiliary only to the criminal proceedings abroad: because, if this is the true view of the case and the bearing of it is properly appreciated, many difficulties will be avoided which owe their origin to what, I venture to think, is a somewhat vague notion as to the real nature of extradition proceedings. Speaking broadly, the magistrate is to hear and decide the case for surrender as he would hear and decide an English case for committal for trial. Translated into a more convenient form, the effect of this is as stated in the proposition, that the facts of the crime committed abroad are to be transplanted into England, and the magistrate is to enquire whether according to English law they are proved to have been committed. But then the question as to the meaning of the "convenient equivalents" in the treaty lists of crimes comes in; *cf.* p. 113. and the question may be put into another form—Is the magistrate to transplant the foreign crime into England, and to hear evidence of it, and then to form his opinion whether the evidence is "sufficient;" or is he to translate it first into its English equivalent, and then transplant the facts, and form his opinion with regard to the commission of the English equivalent?

It would appear from *re Belencontre*, that the practice is for the foreign crime to be translated into its English equivalent in the order from the Secretary of State to the magistrate. There can be little doubt that the difficulty which pervades *Arton's case* arose out of this; for the magistrate did transplant the facts, but he enquired whether there was sufficient evidence of the commission of the English equivalent, "forgery according to English law," to justify committal. And so in *re Belencontre*, he enquired whether there was sufficient evidence of the commission of the English crime "fraud by a bailee." But it is clear, as already pointed out, that none of the forms given in the schedule warrant this, for the reference to the fugitive is that he is "accused of the commission of the crime of . . . within the jurisdiction of . . .," and this cannot by any possibility refer to the English equivalent of the foreign crime.

In this connexion, there is a curious little slip in the drafting of the Act in regard to the summary warrant. The report of its issue having been sent by the magistrate to the Secretary of State, the proceedings are suspended until a requisition has been received from the foreign country. When this has been

Chap. III.
Sec. IX.

re Belencontre.
1891, 2 Q.B. 122.
cf. ante, p. 108.

re Arton (No. 2).
1896, 1 Q.B. 509.
cf. ante, p. 121.

cf. p. 119.

Chap. III.
Sec. IX.

of p. 90.

received, an "order signifying" the fact is sent to the magistrate by the Secretary of State, but nothing is said as to the contents of the order. It is believed that in practice it is based on the form in the schedule for the order when there is a requisition, and that it requires the magistrate to continue the proceedings. The importance of the point involved has already been dwelt on: a Secretary of State's order is the basis of all extradition proceedings.

of p. 101.

But the English equivalent is the important factor in the extradition, and the question arises at what stage it has to be considered. This is only partly answered by the provision of s. 9, that the magistrate may receive evidence to shew that the offence charged is not an extradition crime. That contemplates evidence given by the prisoner to shew that the offence does not come within the treaty, and this presumably includes evidence on which an argument may be based that the foreign crime does not come within the English equivalent. Yet even then, as we have seen, the magistrate has no power to decide the point, but can only express his opinion in his report to the Secretary of State. But whether evidence is given with regard to it or not, the point must arise under the treaty, and if the foregoing argument is sound, the answer to the question put above is, that after the magistrate has committed the prisoner and sent in his report, it then remains for the Secretary of State and his advisers to decide whether the crime comes within the English equivalent. This may be a simple question of law; but it must also be conceded that an examination of the facts may be involved, and that at *this* stage there may be an enquiry whether the facts shew that an offence included in the English equivalent has been committed. It may be that owing to what may appear a somewhat fine distinction, the practice has arisen of considering this enquiry to be within the magistrate's province. But unless the provisions of the Act are followed with exactitude, an undue enlargement of his jurisdiction is almost inevitable; and the point I think it necessary to insist on, is that nowhere in the Act is there any provision that the facts at the magistrate's enquiry must shew the English equivalent crime to have been committed, but only that the foreign crime when shewn to the magistrate to have probably been committed, has an English equivalent. This is restating a point already discussed, that, except under s. 9, the magistrate has no power to interpret the provisions of the treaty.

of p. 102.

If we take the simple case already referred to the position will become plainer. Suppose a case of arson coming from the Argentine. On the hypothesis that fire caused by negligence is arson by English law, it is essential that the magistrate should know that the crime with which the prisoner is charged is "voluntary arson," in order that the evidence may be directed to that crime. There is, further, the great difficulty, already considered, as to the evidence taken abroad. This will naturally be directed to the commission of the foreign crime, and may be altogether irrelevant to the English equivalent. For example; suppose a person charged with a crime against the law of bankruptcy of a foreign country, which depended on an ingredient not necessary in the equivalent crime in the English bankruptcy law. The magistrate must clearly receive the evidence; and it is suggested that the very difficult question of the English equivalent must necessarily be left to the Secretary of State, and may thereafter be raised by the prisoner on *habeas corpus*.

Chap. III.
Sec. IX.

cf. p. 113.

cf. p. 96.

This discussion enables me to deal with one question relating to the evidence before the magistrate which was omitted when the subject was considered in an earlier Section, the admission of hearsay evidence. It is of course part of a larger question, whether evidence is admissible which does not conform to the English rules; but this is a rule to which we attach great importance, and therefore deserves special consideration.

cf. p. 101.

The cases decided under s. 14 do not deal specifically with hearsay evidence; but the language of the judgments is sufficiently comprehensive to warrant this statement, that under that section, the evidence taken abroad, whatever may be its nature, and however it may have been taken, must be admitted. *A priori* considerations already advanced shew the soundness of the rule; and these are reinforced by what has been said above, that the magistrate is enquiring into the foreign crime, and not into the English equivalent; and therefore no particular hardship is done, if up to the point at which it has already been received abroad, evidence is admitted in accordance with the foreign law. Therefore, if a deposition containing nothing but hearsay evidence, (very much admitted, I believe, abroad), were put in, and if there were no other evidence tendered, the magistrate would be bound to admit it. It has been said on the authority of the present Lord Chief Justice, that the magistrate must scrutinise foreign depositions strictly. I take this to mean that he may go so far as to look at this kind of evidence with suspicion because it is hearsay;

Hearsay evidence taken abroad.

cf. p. 98.

cf. p. 100.

cf. p. 95.

Chap. III.
Sec. IX.

that is weight of evidence, not admissibility; and there is no reason to suppose that foreign Judges, though they admit evidence which we do not think admissible, do not apply the same tests in the process of weighing, as we do; for after all, weighing evidence is a human process, based on a knowledge of human nature. Therefore it seems sound to say, that where evidence is received from abroad, its admissibility depends on the foreign law of evidence, which we assume to have been rightly administered. But when we get beyond this point, when we consider evidence actually given in the Police Court, the aspect of the question changes. It may be put in two ways. The English Courts act in aid, but only so far as their own rules of procedure allow them. Or, looking on the proceedings as auxiliary, the facts being transplanted into England, the nature of the enquiry is changed, and the evidence receivable in those auxiliary proceedings must inevitably be governed by the rules of procedure adopted in the Court in which they are held. The provisions of s. 14 require only this modification of the principle as I have stated it above: that in the process of transplanting the facts, those facts are included which have already been evidenced (a word better suited to the case than "proved") in the country where they occurred.

cf. p. 100.

cf. p. 107.

cf. p. 126.

Magistrate's
decision is
"judicial."

The decision of the magistrate as to committal is a judicial decision. Where, therefore, evidence has been taken by one magistrate the case cannot be continued before another, and he give the decision; for it may be of vital importance to the prisoner that this decision should be based, as all other judicial decisions are, not only on the depositions but also on the manner in which the witnesses have given their evidence. If another magistrate were allowed to decide this question, he would do it on the "dead body" of the evidence without its spirit (*re Guerin*, affirming the opinion of Kelly, C.B., in *ex parte Huguet*). The point is important, because it was contended that the provisions of 11 & 12 Vict. c. 42, which allowed the depositions taken before one magistrate to be transmitted to a magistrate of another jurisdiction, was relied on; but the case did not come within that provision, which by s. 21, is limited to the case where the first magistrate has died. Possibly in such a case the same rule would apply to extradition proceedings; but the point is not free from doubt. In the case the Court considered the evidence, and found that the magistrate who had actually committed the prisoner had enough evidence before him on which to come to the decision as to committal.

re Guerin.
60 L.T. 538.
exp. Huguet.
29 L.T. 41.

We may now pass to the proceedings subsequent to, and consequent on, committal.

Chap. III.
Sec. IX.

Section 11. Appeals from the Magistrate.—Habeas corpus.

If the criminal is committed he is to be informed by the magistrate that he will not be surrendered until after the expiration of 15 days, which is one of the general restrictions prescribed by s. 3 (4); and also that he has a right to apply for a writ of *habeas corpus*.

The section does not confer the right of applying for the writ on the fugitive, it merely provides that the magistrate is to inform him that he has the right. This is in accordance with the authorities, the most important of which is *Crowley's case*, where Lord Eldon, C. said,—“The doctrine originates in the maxim of law, that the writ of *habeas corpus* is a very high prerogative writ, by which the King has a right to inquire the causes for which any of his subjects are deprived of their liberty; a liberty most especially regarded and protected by the common law of this country.” And foreigners within the realm are entitled to the same protection in virtue of what is called their “temporary allegiance.” The law relating to the writ lies therefore outside of the Habeas Corpus Act, and the question which has been raised in another book, how far all the sections of that Act apply to foreigners, in view of the use of the word “subjects” in some of them, does not arise.

Prisoner's right to apply for *habeas corpus*.

Crowley's case,
2 Swanst. at p. 48.

cf. Nationality,
Pt. I, p. 146.

31 *Car. II*, c. 2,
cf. ib. p. 178.

This was expressly decided in one of the earliest cases of extradition, which arose under the French Convention Act of 1843, *ex parte Besset*. Lord Denman, C.J., said,—“It is proper that it should be understood that this application is at common law. The statute is not necessary to the right of making it.” And in the recent case, *ex parte Siletti*, Bigham, J., made use of almost identical language.

exp. Besset,
6 Q.B. 481.

exp. Siletti,
6 Q.B. 481.

We now come to the important question whether there is any appeal from the magistrate's decision, so far as the facts are concerned, to issue his warrant for surrender. The Act does not give it expressly; nor can it be inferred, because the proceedings for extradition are made identical with the proceedings on preliminary enquires in the case of an English crime, and there is no appeal from the magistrate's decision that there is a *prima facie* case to send the prisoner for trial. Yet there is a fundamental distinction between the two cases; for the

Appeal from
magistrate.

Chap. III.
Sec. 1X.

English criminal gets his appeal on the trial by jury, whereas the foreign criminal is remitted to the foreign Court, which it may be, owing to the difference in the laws of evidence, of the utmost importance for him to avoid. In view of the exceptional circumstances in which the case comes before the English Courts, a variation in the procedure would appear to have been justified, had the Legislature so determined.* But it has not done so; and therefore the fugitive is left to such remedy, in the case of an alleged error by the magistrate in his appreciation of the facts, as the application for a *habeas corpus* gives him; and in one respect the Courts have developed a rule which is, so far as it goes, in his favour.

* [cf. Macao Extradition Ordinance of Hong Kong; s. 7, given in the Appendix].

Unlawfulness of custody only raised on *habeas corpus*.
U. S. v. Gaynor, 1905, A.C. 128.
cf. ante, p. 124.

Taking up the threads of previous discussion, the sole question on *habeas corpus* is the unlawfulness of the custody (*U. S. v. Gaynor*). The first result of this is that the lawfulness of the custody must be determined by reference to the Act which authorises the custody. But this proposition can legitimately be stated in another way;—"The only ground on which this *habeas corpus* can be successfully maintained is that the committal order was made without jurisdiction and illegal" (Lord Russell, C.J., *re Galwey*). Now the use of the word "jurisdiction" is very probably open to the criticism of Darling, J., in *ex parte Siletti*, and there is no doubt that it is here extended beyond its normal meaning; but it has been accepted to include the fact that there was no evidence to justify the committal, thus—if there was no evidence to justify the committal then there was no jurisdiction to make the order. In *re Galwey*. Lord Russell said,—“After committal we should be entitled to review the magistrate’s decision, not in the sense of entertaining an appeal from it, but in the sense of determining whether there was evidence enough to give him jurisdiction to make the order for committal.” And in *re Arton (No. 2)*, the Lord Chief Justice said again,—“I think I have correctly stated the view of the facts taken by the learned Chief Magistrate. We are not a Court of Appeal on questions of fact from him. We have only to see that he had such evidence before him as gave him authority and jurisdiction to commit.” The question is referred to in many decisions. In *ex parte Huguet*, Kelly, C.B., said,—“It is for the magistrate to decide, and although we may think the evidence very inconclusive, we cannot interfere. He is the only party authorised to decide upon the facts.” And Martin, B., said,—“I do not say that if there had been no evidence before

re Galwey, 1896, 1 Q.B. 230.

cf. post, p. 157.

cf. ante, p. 125.

re Arton (No. 2), 1896, 2 Q.B. 509.

ex p. Huguet, 29 L.T. 41.

him, we would not have discharged the prisoner. This is not a Court of Appeal from his decision, and it is for him to decide whether or not the evidence is sufficient." And in *R. v. Maurer*, Field, J., said,—“So long as the magistrate keeps within his jurisdiction we have no power to interfere with his decision. It is only when there is no jurisdiction, as when there is no evidence before the magistrate, that we can interfere. It seems to me that in *Hugnet's case*, all the Judges intended to decide [was] that it was not for this Court to weigh the evidence, if there was any reasonable evidence of an extradition crime for the magistrate to act upon. If there is such evidence the magistrate is not going beyond his jurisdiction in committing the prisoner upon such evidence;” and Mathew, J., said,—“I agree that there being such evidence we have nothing to do with any question as to the weight of the evidence. There is no provision in the Act giving any right of appeal to us against the magistrate's conclusion.” In *re Castioni*, wider language had been used. Denman, J., said, if the prisoner “is entitled to apply for a *habeas corpus* I think it follows that this Court must have some power to go into the whole matter, and in some cases, certainly if there be fresh evidence, or perhaps upon the same evidence, might take a different view of the matter from that taken by the magistrate.” Hawkins, J., used similar language, though not quite so explicit. But whether or not these *dicta* are capable of a narrower construction, they were expressly dissented from in the recent case, *ex parte Siletti*, where the rule was very precisely laid down by Bigham, J.—The prisoner “may also say that there was absolutely no evidence upon which the magistrate could exercise his discretion as to whether he would commit or not. These things he may say; but I am clearly of opinion that there is one thing he cannot say—namely, that there is evidence one way and the other, and that this Court ought to enter into the consideration as to whether the magistrate has exercised his discretion as to it properly. That he cannot say.” Darling J., having criticised the use of the word “jurisdiction,” § put the

Chap. III.
Sec. IX.

R. v. Maurer.
10 Q.B.D. 513.

re Castioni.
1891, 1 Q.B. 149.

exp. Siletti.
87 L.T. 332.

§ “With regard to the statement that it is only upon questions of jurisdiction that this Court can interfere, I think ‘jurisdiction’ is not quite the right word to use. It is used by my brother Bigham, as I understand it, to cover a good deal more than is usually meant when we use the word jurisdiction in ordinary cases. It is used to cover want of jurisdiction in the magistrate—that is, want of that which would properly be called jurisdiction. It is also used to cover the case of there being no evidence against the accused

Chap. III.
Sec. IX.

case on the analogy of proceedings in an English case, holding that the Court had not to discharge any different duty from that which it would discharge on the argument of a rule for a *habeas corpus*, applied for by a person in respect of a committal for a crime committed in England.

How far *habeas corpus* an appeal on the facts.

In that case the prisoner alleged that he had further evidence, which if accepted would have proved an *alibi*; but the Court refused to entertain it. To this extent therefore the *habeas corpus* becomes an appeal from the magistrate's decision on the facts: if he can be shewn to be quite wrong in his appreciation of them, the rule for the issue of the writ will be made absolute; and to this extent the principle that the question of the facts is one of judicial discretion is modified.

No appeal from refusal to grant *habeas corpus*.

But there is another rule which works against the prisoner. The Court of Appeal has no jurisdiction to entertain an appeal from the refusal of the Queen Bench Division to grant an order *nisi* for a *habeas corpus*. The point was treated as doubtful in *R. v. Weil*, but was again taken in *ex parte Woodhall*, and decided in the negative. By s. 47 of the Judicature Act, 1873, it is provided, that "no appeal shall lie from any judgment of the said High Court in any criminal cause or matter, save from some error of law apparent upon the record &c." "The intention was that no appeal should lie in any 'criminal matter' in the widest sense of the term, this Court being constituted for the hearing of appeals in civil causes and matters . . . I think that the clause of s. 47 in question applies to a decision by way of judicial determination of any question raised in or with regard to proceedings, the subject matter of which is criminal, at whatever stage of the proceedings the question arises" (Lord Esher, M.R.). The point was taken that the words "criminal cause or matter" only applied to cases triable in England, and that as extradition is based on the criminal law of a foreign country it did not come within the term. Bowen, L. J., said that the nature of the magistrate's duty, with its reference to English criminal law, made the proceedings criminal; and that it was "a matter to be dealt with from first to last by persons conversant with criminal law, and competent to decide what is sufficient evidence to justify a committal."

Extradition proceedings are "criminal."

R. v. Weil,
9 Q.B.D. 701.
cf. ante, p. 90.
ex p. Woodhall,
20 Q.B.D. 832.

at all, and where there was, in the opinion of this Court, no evidence against the accused, not even a *prima facie* case against him, in such a case as that this Court would go into the matter, and on ascertaining that there was no evidence, would make the rule absolute for a *habeas corpus*."

This decision has an important bearing on a matter already referred to, whether the prisoner can give evidence under the Criminal Evidence Act, 1898. From the point of view of interpretation it would seem that he cannot, for the Act applies to "every person charged with an offence," and this must mean charged with an offence against English law. But by s. 6, the Act is to apply to all criminal proceedings; and therefore, following the judgment in the above case, this would extend the Act to extradition proceedings.

Chap. III.
Sec. IX.

Fugitive's
evidence.
61 & 62 Vict.
c. 36.
cf. ante, p. 105.

A point of practice was decided in *R. v. Portugal*, as to the stage at which the argument on the validity of the prisoner's custody is to take place. It may arise on the application for a rule *nisi* for the *habeas corpus*, or on the motion to make the rule absolute, or for the discharge of the prisoner, and if more than one argument were allowed, the same question might come up before different Judges. In this case Day, J., expressed a very decided opinion that there should only be one argument.

R. v. Portugal.
16 Q.B.D. 487.

"I regret that I was not a member of the Court which gave judgment in this case yesterday, but I am now in entire possession of the grounds on which it was delivered. That Court heard a full argument from both sides. Now, on the application that the prisoner be discharged further arguments have been addressed to us. I cannot help thinking that such a course is a matter of great public inconvenience. It would be very inconvenient if double arguments on the same question came to be allowed. The question raised here, if it was not raised in the former discussion, ought most certainly to have been raised then. For myself I shall in future never allow an argument on the issuing of a *habeas corpus* unless there be an undertaking that there is to be no further argument. The former practice was for the argument to take place on bringing the prisoner up for discharge, but at the instance of a former Attorney General that course was changed, and the argument now takes place on the application for the writ of *habeas corpus*. I shall, however, take care that this inconvenience does not occur again."

A double argument did take place in *Arton's case*, but the ground covered was not the same in both.

cf. pp. 57, 121.

§ A rule absolute in the first instance for a writ of *habeas corpus* had been previously granted, and the writ issued. The prisoner was brought up on the return, but the Attorney General at the commencement of the argument pointed out that the practice in matters of this sort had since 1873 been to obtain a rule *nisi* for a *habeas corpus*, and argue the case on the rule, and that such practice was far more convenient. He also stated that the points on which the prisoner's counsel wished to rely would not be available to him on the return to the writ which was on the face of it perfectly good.

Chap. III.
Sec. IX.

Locus standi of the foreign Government.

Appearance
of foreign
Government in
English Courts.

re Guerin.
60 L.T. 533.

* at p. 52.

The position of the foreign Government in the proceedings on the *habeas corpus*, whether it has any *locus standi*, is a question not too clearly answered from the reports; and there are traces in some cases of foreign Governments having been represented by counsel. In *re Guerin* apparently, not only the French Government, but also the *Banque de France*, the complainants in France, were represented. In Byron and Chalmers' work* it is stated that the order *nisi* for the *habeas corpus* calls on the Home Secretary, the committing magistrate, and the foreign Government, to shew cause why the writ should not issue, notice being given to the representative of the foreign Government in this country.

cf. p. 90.

It is difficult to see how this practice can be justified, for the Act nowhere recognises the right of the foreign Government to apply to the Court; the procedure provided is by requisition to the Secretary of State; and even when the summary procedure of issuing a warrant by the magistrate is resorted to the proceedings are perfected by the requisition. To allow the foreign Government to appear seems not only to be contrary to the whole spirit of the procedure, but also inconsistent with the theory of the subject: which is that an application is made to the British authorities for assistance in a matter which does not on the face of it concern them. If the foreign Government had a *locus standi*, the effect of the administrative order of the Secretary of State would be a permission to that Government to conduct the whole of the extradition proceedings. So unusual a course must require express legislative sanction; for the right of access to the British Courts depends on constitutional principles of law, and is independent of the Sovereign and the Executive. Moreover, if the foreign Government had an independent *locus standi*, this unpleasant dilemma might arise; either the British Government would stand aside and allow the conduct of the proceedings to be in the hands of the foreign Government, or both Governments would appear, and there might be a conflict of argument between them; a conflict which might involve the interpretation of the treaty, and thus questions essentially diplomatic might be

cf. Foreign
Judgments,
Pt. III, p. 333.

It was, therefore, agreed that the matter should be argued as if the prisoner's counsel were now moving for a rule *nisi* on affidavits, and the Crown shewing cause against such rule.

R. v. Ganz.
9 Q.B.D. 92.

(Note in the Law Reports, to *R. v. Ganz.*)

raised before the Courts. It is true that the foreign Government is interested in the due fulfilment of the treaty, and that the Courts enforce it as much as they do the statute; but any question of breach of the treaty is a matter for diplomatic representation only.

Chap. III.
Sec. IX.

This view of the case is supported by a sentence in Lord Russell's judgment in *re Galwey*. He said,—“the Law Officers of the Government of the day are here expressing the desire of the Government that this extradition shall take place.”

re Galwey,
1896, 1 Q.B. at p. 237.

In the treaties with Spain and Switzerland, it is expressly provided that in cases where it may be necessary, the foreign Government shall be represented in the English Courts by the English Law Officers, and the English Government in the foreign Courts by the competent Spanish or Swiss authorities, as the case may be. When therefore the treaties refer to the question, they provide that the foreign Government shall appear by the English Law Officers, not independently by its own counsel; and then only in cases where it may be necessary. In the case of *re Castioni*, such a necessity may be said to have existed.

Treaty
provisions.

cf. p. 50.

The discharge.

We have already considered the consequences of the discharge, and how far it precludes any subsequent proceedings being taken. There is only one further point of interest which deserves mention.

cf. pp. 81, 88.

In many treaties in the long form, where the procedure in each country is set out in great detail, there is a special provision in the foreign procedure, that if the documents furnished by the British Government, together with the particulars collected by the foreign police, are insufficient to establish the identity of the fugitive, notice is to be given to our Diplomatic Agent, “and the fugitive person, if he has been arrested, shall remain in custody until the British Government has been able to furnish further evidence in order to establish his identity,” or, the French treaty adds, “to throw light on other difficulties in the examination.” This seems to go further than the power of remand, which is presumably common to all countries; but there is no corresponding provision in the English procedure clause of the treaty, which would enable the magistrate to prolong the enquiry for this special purpose.

Treaty provisions
as to further
evidence.

cf. p. 94.

In this connexion it should be noted that there is a provision

Chap. III.
Sec. IX.

in the Chinese Extradition Ordinance of Hongkong, requiring the magistrate to give notice to the Government of his intention to discharge the prisoner.

Treaty provisions
as to discharge
if evidence not
produced in
2 months.

In some of the treaties, however, the question is dealt with differently, and the fugitive is entitled to be discharged if sufficient evidence for the extradition is not produced within a certain period from the date of his apprehension, usually fixed at two months. This, of course, differs in principle from the delay fixed in s. 8 of the Act for the production of the requisition after the issue of the summary warrant.

re Bluhm,
1901, 1 Q.B. 761.

The effect of such an article in the treaty with Germany was considered in *re Bluhm*. It appeared that there was sufficient evidence on one charge to justify the prisoner's committal for surrender; but there were other charges, and the magistrate remanded the prisoner over the period of two months in order to hear them. The Court held that this was perfectly regular, because the meaning of the article was that a fugitive was not to be detained longer than two months on suspicion; and therefore that he was entitled to his liberty if a case was not made out within that time. But if that article does not apply, as it clearly did not, because a case had in fact been made out within the time, the procedure to be followed is the same as on a similar charge in England. In such a case, although the evidence is sufficient, a prisoner may not be committed if the magistrate knows of other charges pending.

There is however a latent difficulty in the article. It must be confessed that it is not easy to see by what recognised proceeding the fact whether there is sufficient evidence can be ascertained. In *Bluhm's case* the magistrate had expressly stated in the presence of the prisoner that there was sufficient evidence to justify committal. But suppose there had been no such statement! It can hardly have been intended that the Court should go into the evidence, and so usurp the province of the magistrate; and it is doubtful whether the evidence could come before the Court as it did in *re Guerin*.

cf. ante, p. 154.

An analogous case has occurred within the author's experience under the Chinese Extradition Ordinance of Hong Kong. The magistrate had made up his mind that there was no evidence on which he could commit the prisoner, the proof of identity having broken down; but he knew that another charge was, not pending, but likely to be preferred, and he remanded the prisoner. What was in the mind of the magistrate was known

from his report to the Governor. The Court held that the prisoner was entitled to his discharge.

Chap. III.
Sec. IX.

The importance of *re Bluhm* is that it is a direct decision of the Court upon a treaty; and that it goes far beyond *R. v. Wilson*, which dealt only with possible variances between the treaty and the Act. There was here an express provision in the treaty as to the discharge of the fugitive, not contemplated by the Act, and so far therefore, inconsistent with it; but the Court enforced it.

re Bluhm.
1901, 1 Q.B. 764.
R. v. Wilson.
3 Q.B.D. 42.
cf. ante, p. 36.

The end of the proceedings.

By the second paragraph of s. 11, it is provided that after the expiration of the 15 days, or after the decision of the Court on the return to the writ, if adverse to the prisoner, the fugitive is to be surrendered by warrant under the hand and seal of a Secretary of State to such person as in his opinion is duly authorised to receive him on behalf of the foreign State. The words used in connexion with the issue of this warrant are "it shall be lawful;" thus making it obligatory on the Secretary of State to comply with the treaty obligation, except in so far as it may give him any discretion, and justifies the use of the word "demand" in connexion with the requisition for surrender. The Secretary of State may, however, extend the period for issuing the warrant of surrender.

The order for
surrender.

This warrant is the authority to the person to whom it is directed to hold the fugitive criminal in custody, and to do all things necessary to convey him out of the jurisdiction of the United Kingdom. The section says "convey within the jurisdiction" of the foreign State; but this must be a slip in drafting; for the English warrant can give no authority to a foreigner to hold a person in custody beyond the jurisdiction. After he passes those limits the foreign custodian holds the prisoner in virtue of authority from his own State.

In a few treaties (*e.g.*, Monaco), a special article deals with transit through the territories of a third State; the conditions of such transit are to be arranged with that State by the Government to whom the prisoner is surrendered. The detention of the prisoner would have to be legalised by the law of the third State.

Transit through
third State.

The question in whom the lawful custody is during the journey to the foreign State, and how it is vested, is important in connexion with escape. The third paragraph of s. 11 deals with this, and provides that—

Escape.

Chap. III.
Sec. IX.

if the criminal escapes out of any custody to which he may be delivered on or in pursuance of such warrant, it shall be lawful to retake him in the same manner as any person accused of any crime against the laws of that part of Her Majesty's dominions to which he escapes may be retaken upon an escape.

The little slip to which attention has just been drawn is immediately corrected in so far as this provision is concerned; for the recapture is assumed to take place, and is authorised, in some part of the dominions.

Recapture.

The law of recapture is that he who has the lawful custody of a prisoner may retake him if he escape. The effect of this provision seems to be that it treats the prisoner, if he escape into any part of the dominions, as one who has escaped from lawful custody in that country; and the effect of it is probably, that he may be arrested by any person who by the law of that country might be his lawful custodian had he committed an offence therein.

Hot pursuit.

cf. Nationality,
Pt. II, p. 35.

The effect of both parts of the paragraph is to make the warrant effective throughout the dominions; but in the matter of escape, this is somewhat extended by the application of the law of hot pursuit; that is, as explained in another work a pursuit which is started immediately, and which is *hot* pursuit, and does not flag. And this condition being satisfied, there appears to be no limit of space or time during which it may continue. The pursuit may be continued the high seas over, but presumably stopping when the fugitive enters the area over which a foreign nation exercises its legislative jurisdiction. I am not sure that this limitation to the general principle is not too narrow, and that the pursuit may not be extended into other countries, on the analogy, often to be found between international and municipal principles, of the common law right of justifying a trespass by necessity. But undoubtedly in the case we are considering, extradition would step in, and the foreign country would justly say that its right to deal with the fugitive had been expressly recognised by its extradition treaties.

Warrant extends
to British ship,

cf. *ib.* p. 7.
and to putting
fugitive on board
ships of foreign
State;

The authority of the warrant on board vessels flying the British flag is ensured by the word "convey," and I do not think it would be possible to raise any question as to there being no direct provision as to the application of the Act on board British ships. If the prisoner is conveyed on board a ship of his own nationality, he will be, so far as English law has anything to do with the matter, in safe custody, because, by s. 25, foreign vessels

are deemed to be part of the State whose flag they fly, and therefore he has been conveyed to the foreign State demanding his surrender. This is, as far as it goes, a recognition of the claim made by some States that their merchant ships are part of their territory.

Chap. III.
Sec. IX.

cf. Nationality.
Pt. II, p. 11.

It may be presumed that the obligation to surrender requires it to be performed with due precaution. The use of a ship belonging to a third State is fraught with danger; and even within the territorial waters§ there is no warrant for the prisoner's custody in such ships, though there is within the waters of the realm.

but not ships of
third State.

Escape at sea from a British ship is not expressly or impliedly dealt with by the language of the section; but this is probably covered by the law of hot pursuit.

Section 12.

This section provides another safeguard against improper applications for extradition. If the fugitive is committed by the magistrate, and if the decision on the *habeas corpus* is against the prisoner, he is to be surrendered and conveyed out of the United Kingdom within two months of the committal, or of the adverse decision. If he is not surrendered the prisoner may make an application to the Court, after reasonable notice to the Secretary of State, to be discharged out of custody. Unless sufficient cause is shewn to the contrary, the Court will order his discharge. Possibly, however, fresh proceedings for extradition may be started for his extradition.

cf. pp. 81, 88.

SECTION X.

Special jurisdiction in certain cases.

Crimes committed at Sea.

Some of the extradition crimes contained in the schedule to the Act are expressly contemplated as being committed at sea, such as assaults on board ship with intent to destroy life, or to do grievous bodily harm. Further, all the offences included in the Criminal Consolidation Acts of 1861, are specially dealt with when committed within the jurisdiction of the Admiralty.

cf. Sec. VIII.

§ The law as to the "Territorial Waters" and the "Waters of the Realm" is very fully examined in my work on Nationality:—in Part I. Chap. III, and Part II, Chap. V, as to the former, and in Part I, Chap. II, as to the latter.

Chap. III.
Sec. X.

cf. "Nationality,"
Pt. II, pp. 7,
et seq.

As is well known, there is a difference of opinion between some countries as to how far a merchant ship can be considered as part of the territory of the country whose flag she flies. Our own law, although there are some adherents to the "floating island" theory, is not particularly clear on the subject; but for the purposes of the Act, s. 25 provides that every vessel of a foreign State shall "be deemed to be within the jurisdiction of and to be part of such foreign State." There can be little doubt that this includes merchant vessels; for with regard to ships of war, the doctrine that they are part of the State has long since been accepted. Further, this provision would hardly have been passed merely to deal with ships in the position of the *Parlement Belge*; if it had, they would have been defined as "belonging to," instead of "of a foreign State."

*the Parlement
Belge.*
5 P.D. 197.

Special
jurisdiction
for offences
committed at
sea.

So far this section has only been considered as justifying the surrender of a fugitive on board a vessel flying the flag of the country which makes the requisition. But it has a wider operation, and covers the case of a person who has committed an offence on board a foreign ship and escaped into the British dominions. Putting the matter still more broadly, foreign ships are, for all purposes of extradition, treated as part of the territory of their flag. But the Act, dealing as it does with surrender from British territory, contains no corresponding provision with regard to British ships; whether reciprocity exists in this matter depends, therefore, on the view which the foreign State in question in any case takes of the law applicable to merchant ships. The treaties deal with the question, but curiously enough only in connexion with the summary procedure; and where there is no article dealing with this, the treaty is silent. The article which sanctions the summary procedure by warrant of the magistrate, usually concludes as follows:—

Extradition from
ship-board.

cf. "Nationality,"
Pt. II, p. 35.

The same rule shall apply to the cases of persons accused or convicted of any of the crimes or offences specified in this Treaty, and committed on the high seas on board any vessel of either country which may come into a part of the other. [Argentine Treaty, art. X]

Special
jurisdiction of
other magistrates.

Special provisions are made by s. 16 for the exercise of jurisdiction in the case of crimes committed at sea, for obviously the reference of such cases to the Bow Street Magistrate would be highly inconvenient. "Where the crime in respect of which the surrender of a fugitive criminal is sought was committed on board any vessel on the high seas which comes into

any port of the United Kingdom," the jurisdiction of the police magistrate throughout the Act may be exercised by "any stipendiary magistrate in England or Ireland, and any sheriff or sheriff substitute in Scotland." This allows the Secretary of State, when he has received a requisition, to issue his order to any of these magistrates; it also empowers them to issue a summary warrant before requisition. In the latter case, it is provided by paragraph (3), that the fugitive when apprehended is to be brought, on a warrant issued, under the penultimate paragraph of s. 8, "before the stipendiary magistrate, sheriff or sheriff substitute, who has jurisdiction in the port where the vessel lies, or in the place nearest to that port." The paragraph gives these magistrates alternative jurisdiction with the one "who issued the warrant" of apprehension. The committal of the prisoner may be "to any prison to which the person committing him has power to commit persons accused of the like crime."

The only provision of the Act which is excluded from this special jurisdiction is s. 13, which allows the warrant of the police magistrate to be executed in any part of the United Kingdom, in the same manner as if it had been issued or subsequently indorsed by a justice of the peace in the place where it is executed. Warrants issued under s. 16 must, therefore, be endorsed for execution out of the jurisdiction of the issuing magistrate.

By s. 6 of the Act of 1873, the jurisdiction exercised by other magistrates under s. 16, is to "be deemed to be in addition to, and not in derogation or exclusion of, the jurisdiction of the police magistrate," under the principal Act.

Invalid fugitives.

Except in the case of crimes committed at sea, the Bow Street Magistrate has unique jurisdiction in extradition for the whole of the United Kingdom. This seriously hindered the proceedings in the case of Dr. Hertz, whose extradition was demanded by France, on account of his long illness. The Act of 1895 was therefore passed to allow other magistrates to act in special cases by direction of the Secretary of State.

The provisions of the Act are as follow. If the Secretary of State, on representation made by or on behalf of the fugitive, is of opinion that the removal for the purpose of his case being heard at Bow Street will be dangerous to his life or

If removal to Bow Street dangerous another magistrate may hear the case;

Chap. III.
Sec. X.

prejudicial to his health, he may in his discretion order, stating the reasons for such opinion, the case to be heard before another magistrate at the place in the United Kingdom at which the fugitive was apprehended, or for the time being is.

The magistrates to whom the order may be directed are,—
in England, a metropolitan police magistrate or a stipendiary magistrate;

in Scotland, a sheriff or sheriff substitute;

in Ireland, a stipendiary magistrate.

All the powers of the police magistrate under the Act are conferred on the magistrate to whom the order is directed, and he “may commit to the same prison as if he were a magistrate for the county, borough, or place in which the hearing takes place.”

similar provision
as to custody.

Further by sub-sec. (3), when the fugitive criminal is committed to prison under this Act, if the magistrate is of opinion that it will be dangerous to his life or prejudicial to his health to remove him to prison, he may order him to be held in custody at the place in which he for the time being is, or any other place to which the magistrate thinks he can be removed without danger to his life or prejudice to his health; such custody is to be deemed legal custody, and the Extradition Acts are to apply to him accordingly.

But treaty
provisions to
be observed.

The original order by the Secretary of State is only to be made, “if it appears to him consistent with the Order in Council under the Extradition Act, 1870, applicable to the case.” This prevents the Secretary of State acting under the statute in those cases where the procedure provisions of the treaty are precise, and refer to “a police Magistrate in London.” After the Act was passed, a Supplementary Convention was entered into with France in 1896, altering these words to “a magistrate” in art. VII of the treaty of 1876, thus enabling it to be applied in the case of Dr. Hertz. But the same provisions still remain unaltered in many treaties (*e.g.* Spain, Switzerland, and Uruguay.)

Taking evidence for Foreign States.

19 & 20 Vict.
c. 113.

The Foreign Tribunals Evidence Act, 1856, was passed “to provide for taking evidence in Her Majesty’s dominions in relation to civil and commercial matters pending before foreign tribunals.” This Act is extended to criminal matters by s. 24 of the Extradition Act, which provides that—

the testimony of any witness may be obtained in relation to

any criminal matter pending in any Court or tribunal in a foreign State in like manner as it may be obtained in relation to any civil matter under the Act, 19 & 20 Vict. c. 113.

Chap. III.
Sec. X.

By this section, that Act is to be construed as if the term "civil matter" included a criminal matter, and as if the term "cause" included a proceeding against a criminal.

The proviso excludes the application of the section to "the case of any criminal matter of a political character" proceeding abroad. Political prosecutions excluded.

The section was amplified by s. 5 of the Act of 1873, which empowers the Secretary of State to require a police magistrate or justice of the peace to take the evidence required by the foreign State. The evidence is to be taken of every witness appearing for the purpose, "in like manner as if such witness appeared on a charge against some defendant for an indictable offence;" with this exception however, that "such evidence may be taken in the presence or absence of the person charged, if any, and the fact of such presence or absence shall be stated in such deposition." This is a concession to the practice of continental nations referred to by Blackburn, J., in *re Counhaye*. Presumably any other points of difference between the English law of evidence and that of the foreign country would be met by the magistrate receiving, for example, hearsay evidence, and noting any objection which may be taken. Evidence may be taken by magistrate. *re Counhaye*. L.R. 8 Q.B. 410. cf. ante, p. 98.

Witnesses may be compelled to attend and give evidence, answer questions, and produce documents, after payment or tender of a reasonable sum for costs and expenses, in the same way as they may be in the case of a charge preferred for an indictable offence. Persons giving false evidence are to be guilty of perjury.

The same proviso as in s. 24 of the principal Act is introduced, excluding the application of the section "in the case of any criminal matter of a political character."

Under s. 2 of 19 & 20 Vict. c. 113, a certificate of the Ambassador or other representative of the foreign State is required, to the effect that the matter in relation to which the application is made is a civil or commercial matter pending in the foreign country, and that the foreign Court is desirous of obtaining the evidence of the witnesses. This would appear to be unnecessary under the sections of the Extradition Acts, as the request is made in the first instance to the Secretary of State.

Chap. III.
Sec. X.

The provision of the Act of 1873 covers the subjects dealt with by ss. 3 and 4 of the Act of 1856: the examination of the witnesses on oath, perjury, and the payment of witnesses. Section 5, however, is important; it provides that a witness examined under the Act is to have the like right to refuse to answer questions tending to criminate himself, and other questions, which a witness in any cause pending in the Court or before the Judge by which the order for examination was made would be entitled. Further, "no person shall be compelled to produce under any such order . . . any writing or other document that he would not be compellable to produce at a trial of such a cause."

R. v. Daye.
1908, 2 Q.B. 333.

In *R. v. Daye* it was held that "document" included a sealed packet. It was further held, on general principles, that where a person has received a document upon the terms that it shall not be delivered up except with the consent of the depositor, this is no answer to a *subpœna duces tecum* requiring him to produce it. The Court did not assent to Sir Edward Clarke's criticism of the provision.*

* Extradition,
at p. 258.

It should be noticed that these provisions in the Extradition Act are one-sided, and like the Evidence Act, 1856, itself, do not depend on any arrangement being made with the foreign State; secondly, that they are not limited to extradition proceedings, or to cases in which there may be a requisition for extradition.

Treaty provision,
as to each party
taking evidence
for the other.

In a few treaties (*e.g.*, Netherlands), there is an article providing that each country shall take evidence for the other in any pending criminal matter. The two provisions considered above allow our part of the obligation to be fulfilled. But the reciprocal provision is useless, for the evidence taken abroad would not be admissible at the trial; although the Evidence by Commission Act, 1859, is wide enough to allow a commission to issue in a criminal proceeding. So far as extradition proceedings are concerned, evidence taken abroad is admissible under s. 14, but this is not taken by request of the English Court.

SECTION XI.

The application of the Act to Extradition to England by Foreign Countries.

The point which has been so much insisted on in the preliminary discussions, that the Act, except in s. 19, does not deal

with the surrender of fugitives to England by foreign countries, must now be considered.

Chap. III.
Sec. XI.

It is necessary to repeat briefly what has been said already. The constitutional principle, cardinal to the subject, is that legislation is only necessary in connexion with treaties when the law of the land would be interfered with in carrying out the treaty obligations. With the fact that the King has entered into an arrangement with a foreign Sovereign that he will surrender fugitives from English justice the law has no concern; for the moment such a person comes within the area of English jurisdiction, he may be arrested as a person accused or convicted of a crime against the law of this country. If legislation is necessary in the foreign country that is no concern of ours. Supposing however a limitation on the powers of prosecution to be imported into the treaty, then legislation at once becomes necessary, for here there is an interference with the law. Such a limitation is introduced by the reciprocal arrangement that fugitives when surrendered shall only be tried for the offence in respect of which they were surrendered. This is insisted on in s. 3 (2), in the case of surrenders by this country; it is obvious that the same condition will be insisted on by the foreign country; therefore provision is made in s. 19 of the Act approving of its being fulfilled.

Parliament does not authorise surrender to England;
cf. p. 33.

but limits power of prosecution to extradition crime.

Where, in pursuance of any arrangement with a foreign State, any person accused or convicted of any crime which, if committed in England, would be one of the crimes described in the first schedule to this Act, is surrendered by that foreign State, such person shall not, until he has been restored or had an opportunity of returning to such foreign State, be triable or tried in any part of Her Majesty's dominions other than such of such of the said crimes as may be proved by the facts on which the surrender is grounded.

The meaning of this is plain, and follows on what has already been said. If we imagine extradition legislation introduced in a foreign country in order to carry out the treaty obligations of its Sovereign, modelled on our own, it would, as we do, require that this condition should be assured by the law of, or by arrangement with, other countries. I have suggested that the treaty itself fulfils the condition of "arrangement"; but for greater caution this provision is introduced into the Act, and so the condition in our case is doubly satisfied. That is the only condition imposed on the foreign country, it is the only condition imposed on us by the foreign country, which in any way interferes with the law.

cf. p. 61.

Chap. III.
Sec. XI.

The restriction in s. 3 (1) with regard to political offences is a check on the surrender of fugitives, not a restriction on trial after they are surrendered.

But the language of the section is not too clear.

Comparison
between s. 19
and s. 3(2).

First, there is a curious difference in the wording of s. 19 from that used in s. 3 (2). By that section the condition is that a person is not to be tried in the country to which he is surrendered for any offence committed prior to his surrender, "other than the extradition crime proved by the facts on which the surrender is grounded"; but by s. 19, the person surrendered is not to be tried for any offence committed prior to the surrender "other than such of the said crimes as may be proved by the facts on which the surrender is grounded." The "said crimes" are those contained in the schedule; this provision, therefore, allows the person to be tried for any such offence which the facts prove. It may be said that the former provision is really capable of the same construction; but on the face of it, it seems more nearly to correspond with the form, which is to be found in practically all the treaties, that the person surrendered is not to be tried "for any other crime, or on account of any other matters, than those for which the extradition shall have taken place;" in other words, that trial after surrender is to be limited to the extradition crime. For example, the facts proved abroad on the proceedings for the surrender of a fugitive charged with arson may fail at the trial in England to prove arson; but they may prove larceny, and under s. 19, he may be tried for this latter offence. Whether this interpretation could be put on s. 3 (2) or not, it seems fairly clear that it does not come within the treaty form of the provision.

What is an
"opportunity of
returning?"

Secondly, there is nothing in the Act to indicate what an "opportunity of returning" to the foreign country which has surrendered the fugitive means, nor yet what the process of "restoring" may involve. It is just possible that s. 19 itself might be construed as authorising so much detention as is necessary for the restoration; but the point is obscure. Further, the length of the opportunity is not indicated. Some of the treaties contain definite provisions on this point; as in that with Luxemburg, where it is limited to one month.

But the important point in the section is the reference to the offences in the schedule; for this seems to militate against the constitutional principle on which the Act is based, that it has nothing to do with that part of the arrangement which relates

to surrender to England. It is the only part of the Act which assumes the arrangement referred to in the preamble to be reciprocal. It seems clear that if s. 19 had been drafted thus—“Where, in pursuance of any arrangement with a foreign State, any person accused or convicted of any crime is surrendered by that foreign State, &c.,” it would have been sufficient.

Chap. III.
Sec. XI.

The decision in *Poolley v. Whetham*, does not touch the points of interpretation raised above; but it settles that an attachment for disobedience of an order of Court in a civil action, in other words, an imprisonment for a contempt of Court, although the offence was committed before the surrender for another offence, does not fall within the meaning of s 19. The punishment for contempt “is a mere civil process to enforce obedience to an order of a civil Court on behalf of or for the benefit of a private person, which has no reference whatever to any offence committed against the State,” with which alone the section deals. It was argued that the section had reference only to political offences, and James, L.J., suggested that originally the idea was to prevent a man being brought to this country for an ordinary offence and then tried for a political offence; but he held that the section was now general.

Poolley v. Whetham,
15 Ch. D. 435.

Section does not
apply to contempt
of Court
committed prior
to extradition
offence.

cf. Treaty with
United States,
art. II, Appdx.
p. 248.

The case does, however, suggest the existence of a very important principle. The plaintiff had been extradited from France for an alleged offence against the Bankruptcy Act, and it was after his surrender that the application for attachment for contempt of an order which was then in existence was made. An attempt was made to read into s. 19, the following—“nor shall he be tried for any offence committed prior to his surrender, if he proves that the requisition for his surrender has in fact been made with a view to try or punish him for any other extradition offence.” In other words it was attempted to incorporate the last part of s. 3 (1) into s. 3 (2), and then to enlarge s. 19 to a corresponding extent. The point of this argument will be seen from a reference to the previous discussion on the last sentence of s. 3 (1), and the meaning of the words “in fact a view, &c.,” and the proof of an ulterior object on the part of the foreign Government in making the requisition. That provision is limited to offences of a political character. Yet the attempt did not fail on principle; for the Court were unanimous in holding that if an indirect motive had been made out, even in the case of an ordinary offence, if it could be shewn that the person was using

cf. p. 47.

Abuse of
extradition
procedure.

Chap. III.
Sec. XI.

the process of extradition, indirectly and dishonestly, not with the intention of prosecuting the fugitive when surrendered, but with the intention of dropping the prosecution and bringing him here for the sole purpose of enforcing an order by attachment, it would have been an abuse of the process of the Court, and the person would be discharged from the attachment at once.

SECTION XII.

The repeal clause of the Act.

The repealing clause, s. 27, of the Act, is as follows;—

The Acts specified in the third schedule to this Act are hereby repealed as to the whole of Her Majesty's dominions; and this Act (with the exception of anything contained in it which is inconsistent with the treaties referred to in the Acts so repealed) shall apply (as regards crimes committed either before or after the passing of this Act), in the case of the foreign States with which those treaties are made, in the same manner as if an Order in Council referring to such treaties had been made in pursuance of this Act, and as if such Order had directed that every law and ordinance which is in force in any British possession with respect to such treaties should have effect as part of this Act.

The second clause is spent, as it deals with proceedings pending at the time the Act was passed.

Treaties in force
in 1870.

The Acts repealed are those giving effect to the conventions with France, the United States, and Denmark; and the treaties then existing with France and Denmark have been replaced by new ones. If the same thing had happened with regard to the treaty with the United States, the repealing clause would be spent entirely, and would not require notice. But article X of the Ashburton Treaty of 1842 is still in force, and is the basis of the existing conventions. It is necessary, therefore, to consider the meaning and effect of the section. In doing so we must once more revert to fundamental constitutional principles.

cf. Chap. III,
Sec. I.

Enough has been said to justify and explain the following statement. Parliament cannot repeal a treaty. The repeal of the Act giving effect to a treaty, therefore, does not touch the treaty, but leaves it standing: entire so far as surrenders to this country are concerned; but inoperative so far as surrenders by this country are concerned. Annihilation of the treaty can only be effected by the means indicated in it, and the King's Govern-

ment, not Parliament, must do it. The means are indicated in the instance in article XI of the treaty—It is to continue in force until one or other of the High Contracting Parties should signify its wish to terminate it, and no longer. If, therefore, it is only intended to put things on a new basis so far as the machinery for surrendering fugitives from this country is concerned, the repealing clause by which the old machinery is abolished must be so drafted as to apply the new machinery to the old treaties. This is what is done in s. 27, omitting the parentheses—This Act shall apply (*i.e.*, in lieu of the old Acts) in the case of the foreign States with which those (*i.e.*, the existing) treaties are made; then, in order to make the linking up of the machinery complete, this is added—“in the same manner as if an Order in Council referring to such treaties had been made in pursuance of this Act.” An Order in Council is necessary to apply the Act to any treaty; the section says that it is to be presumed to have been made. Then comes the first parenthesis—“(with the exception of anything contained in it—*i.e.*, in the Act—which is inconsistent with the treaties referred to in the Acts so repealed).” This provision was essential constitutionally, for the now familiar reason that the Act could not touch the treaties; and if there were anything inconsistent with the treaties in the Act, the only thing to be done would have been for the Sovereign’s advisers in another branch of the Government to have advised the negotiation of new treaties, as was in fact done in the case of Denmark in 1873, and of France in 1876. But the position of a treaty existing when an Act is passed—more especially one which has already had effect given to it by an Act—is very different from that of a treaty made when the enabling Act is already in existence. The practical question is, therefore, what is the effect of the repealing clause on the old treaty with the United States. The list of offences must remain untouched, in virtue of the first parenthesis, even supposing there were any not included in the schedules to the new Acts. Then as to the machinery provisions, which are as follow:—

Provided that this (*i.e.*, the surrender) shall only be done upon such evidence of criminality as, according to the laws 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; and the respective Judges and other magistrates of the two Governments shall have power, jurisdiction, and authority, upon complaint made under oath, to issue a warrant for the

Chap. III.
Sec. XII.

Treaties
terminated by
the Sovereign.

New procedure
fitted to old
treaties.

Effect of Act on
the Ashburton
Treaty.

Chap. III.
Sec. XII.

apprehension of the fugitive or person so charged, that he may be brought before such Judges or other magistrates respectively, to the end that the evidence of criminality may be heard and considered; and if, on such hearing, the evidence be deemed sufficient to sustain the charge, it shall be the duty of the examining Judge or magistrate to certify the same to the proper executive authority, that a warrant may issue for the surrender of such fugitive.

Presumably, under the first parenthesis, this may be added to but it may not be altered or restricted. But then comes this curious point, which, whether it be academic or not, must be noticed in order to make the survey of the subject complete. The enabling Act of 1843 is repealed; the Act of 1870 does not apply if there is anything in it inconsistent with the treaty; if, therefore, there is anything in the treaty inconsistent with, or not covered by, the Act, it remains untouched; but if it is a provision which requires legislative sanction, it cannot be acted on or enforced, for there is no such sanction.

The fact that this very complicated analysis of the language is necessary to understand the section has led to its being criticised as being obscure. The question arose in *re Bowrier*, in connexion with the old treaty with France, and the following opinions were expressed by the learned Judges. Cockburn, C.J., said,—

re Bowrier.
27 L.T. 284.

“I rather hesitate to express any decided opinion as to the construction to be put upon the 27th section, although I see plainly what was the intention of the Legislature, that is to say, it was intended, while getting rid of the statutes by which the treaties were confirmed, to save the existing treaties in their full integrity and force. This has probably been effected, but is certainly not very clearly expressed. Nothing would have been more simple than to enact that, although it was expedient to repeal the statutes, yet that the treaties should have full force and effect, instead of which this complicated and obscure language has been adopted.”

And Blackburn, J., said,—

“I have no doubt that it was intended that the old treaties should still have force and effect, and that they should be enforced by the machinery provided under the Extradition Act, 1870. It was not intended to abrogate the old treaties, but I have very serious doubts whether the Legislature effected by the 27th section what was intended.”

CHAPTER IV.

Extradition in the Colonies.

SECTION I.

The application of the Act to the Colonies.

THE EXTRADITION ACT is imperial legislation. When it is applied by Order in Council to any country with which a treaty has been entered into, the Act is, by s. 17, to extend to every British possession, unless it is otherwise provided in the Order. This allows the application of the law to be modified in accordance with the treaty, so that any special arrangement can be embodied in the Order.

The term "British possession" as used in the Act, is, by s. 26, defined to mean—

Definition of
"British
possession.

any colony, plantation, island, territory, or settlement within Her Majesty's dominions, and not within the United Kingdom, the Channel Island, and the Isle of Man; and all colonies, plantations, islands, territories, and settlements under one Legislature, as hereinafter defined, are deemed to be on British possession.

This does not include Protectorates, or territories belonging to and administered by Chartered Companies, for which special arrangements must be made.

The process by which the Act is extended to any given colony is of the simplest; the name of the colony is to be substituted throughout the Act instead of "United Kingdom" or "England." The Act then becomes part of the colonial statute-book, and like the Act in its operation in the United Kingdom, it then governs the surrender of fugitives from foreign countries by the colonial Government; but it does not touch the surrender to the colonies of fugitives, except in the application of s. 19, which is specially extended.

Chap. IV.
Sec. I.

Colonies are independent countries for legislative purposes.

The constitutional relations between the British Colonies and Mother Country must be appreciated in order to understand colonial extradition. They are, small and large, Crown Colonies and Self-governing Dominions, independent countries for all purposes of legislation and administration, subject only to the power of Parliament to legislate for them, and the right of the Home Government to control their external relations; they must therefore be recognised as such by foreign Governments. Theoretically, the requisition must therefore be made by a foreign country to the Government of the colony to which a fugitive has escaped; and a colony must make its own application to the foreign country or colony in the case of a fugitive from its justice. Whether the treaties quite carry out this theory will be considered presently. To take a concrete instance; in the case of a fugitive from Mauritius to Réunion, the application must be from the Government of the one colony to that of the other. But in the case of a fugitive from England to Réunion, there is no provision enabling the Government of Mauritius to apply for his surrender on behalf of the Home Government, even though he had passed through that colony on his way to Réunion. This fundamental principle of colonial independence is recognised in s. 17 (2), which lays down as a fundamental principle, that "no warrant of a Secretary of State shall be required."

Changes in machinery.

The name of a colony being substituted for the United Kingdom, or England, the following changes in the machinery for surrender are provided.

A.—The requisition for surrender is to be made to the Governor by any person recognised by that Governor as a Consul-General, or (if the fugitive criminal has escaped from a colony or dependency of the foreign State on behalf of which the requisition has been made) as the Governor of such colony or dependency.

cf. p. 79.

By and to whom requisition to be presented.

The remarks already made with regard to the recognition of a foreign diplomatic representative "by the Secretary of State" under s. 7, apply to the recognition of consuls and foreign Governors "by the Governor" under s. 17; because consuls in the colonies receive their *exequatur* from the King. The term "recognition" is even more inapt in the case of a foreign colonial Governor; the appointment of such an officer is an act of State, and requires no formal recognition by any other country. The knowledge of a British Governor of the fact must be derived from the usual sources of public and official information.

With regard to foreign colonies, s. 25 provides that “every colony, dependency, and constituent part of a foreign State” is to be deemed within the jurisdiction of and to be part of such foreign State, except where expressly mentioned in the Act as distinct. It would seem, therefore, that in the case of a fugitive from a foreign colony to the United Kingdom, the requisition is to be made in the usual manner by the diplomatic representative of the foreign State, and not the colonial Governor. But where the fugitive from a foreign colony is in a British colony, there is an express distinction made by the Act. The section is so drafted that it seems doubtful whether the requisition could be made to the Secretary of State by the diplomatic representative in England, and by him forwarded to the Governor of the colony.

Chap. IV.
Sec. 1.

Foreign colonies.

A difficulty in applying this sub-section must often arise in the case of countries which have no accredited consular officer in the colony to which a fugitive has escaped. The practice of insisting that the requisition shall be made by a recognised agent of the foreign country being essential in order to prevent improper extraditions, the only remedy in such a case is for the foreign country to apply for some other consul to be recognised as its consul *ad hoc*. This must of course create delay, but it is inevitable if the surrender is to be carried through legally. There can I think be little doubt, though there is no express decision on the point, that the summary proceedings by way of a magistrate's warrant could not be put in force if there are no means of subsequently regularising them by requisition, for they are strictly provisional pending the receipt of the requisition. There are however practical compensations. Suppose a Frenchman had escaped, say, to the Falkland Islands, his movements on arrival could be watched; his departure would not be likely to be unknown; and the Government Departments concerned would use their best endeavours to bring the fugitive to justice, while still keeping within the limits of the law.

Foreign countries
without consuls
in the colonies.

Both these questions will be referred to again in the next Section, where the colonial article in the treaties is discussed.

B.—“All powers vested in or acts required to be done” by the police magistrate and the Secretary of State, or either of them, are to be done by the Governor of the Colony: and “no warrant of a Secretary of State shall be required.”

Exercise of all
powers by
Governor.

The reason for the introduction of this provision will be explained when we come to deal with s. 18; for the moment the

Chap. IV.
Sec. I.

only thing to be noted is, that the requisition is to be addressed to the Governor; as magistrate he is to issue all the warrants, including the summary warrant for apprehension of the fugitive; and as Governor he is to issue the warrant for surrender. In colloquial language, he is to issue orders to himself, and to report to himself.

Imprisonment in
Colonial prisons.

C.—Any prison in the colony may be substituted for a prison in Middlesex, to which the fugitive is committed to await the warrant for his surrender.

Powers of
Colonial Judges.

D.—A Judge of any Colonial Court exercising the like powers to those of the Court of Queen's Bench in England, "may exercise the power of discharging a criminal when not conveyed within 2 months out of such British possession." This confers on Colonial Judges the special powers created by s. 12; and the only point which calls for remark is the omission of any mention of the other judicial functions exercisable under the Act. It assumes that a right to apply for a writ of *habeas corpus* exists in the colony, and therefore that the words "after the decision of the Court" in s. 11, as well as the corresponding reference in s. 3 (1), apply of necessity to the Colonial Court by the mere extension of the Act to the colony. § But, in the first place, it is by no means certain that the Habeas Corpus Act extends to the colonies; secondly, the law is in a state of great uncertainty how far the prerogatives of the King exist in colonies in which foreign law prevails, and therefore whether the writ of *habeas corpus*, described as a high prerogative writ, is available in every colony. This question has been considered in another work; we may, however, presume, as we may presume in the case of foreign countries, that although there may be no writ technically known as *habeas corpus*, yet that there are laws protective of liberty, and that they apply equally to aliens in the country as to nationals.

31 Car. II, c. 2.

cf. Nationality,
Pt. I, p. 221.

cf. *ib.* p. 209.

Foregoing
provisions apply
to small colonies.

These are all the modifications which are introduced into the Act as applied to the colonies by s. 17; and it manifest that they are framed on the scale of very small colonies, and that others are necessary in the case of colonies of any size. The

§ The Habeas Corpus Act, 1862, does not apply to this question; but it is interesting to note that it is not based on this supposition that a writ of *habeas corpus* may issue out of all the Courts in the colonies. It provides that no writ of *habeas corpus* shall issue out of England into any colony where there is a lawfully established Court of Justice "having authority to grant and issue the said writ, and to ensure the due execution thereof throughout such colony."

accumulation of all the administrative and magisterial powers in the Governor is necessary in those colonies where the staff is exceedingly small; but it would not work in larger colonies, and these are dealt with in s. 18. The scheme of the colonial provisions in the Act is to begin with the smallest as the normal, and then to provide for those which are capable of exercising larger powers.

Chap. IV.
Sec. 1.

The colonies are divided into two categories in s. 18, which has this marginal note—"Saving of laws of British possessions." The first category includes all those in which there is a staff of sufficient size to allow the different functions to be performed by different officers; and the simple expedient has been adopted of putting the Act in force bodily, and allowing the necessary changes of machinery to be made by the local Legislatures. This local law is then incorporated into the Act, and the Act and the ordinance together become the extradition law of the colony. There is practically no limitation to the changes which may be made, so long as the fundamental principles of the Act are not departed from.

Colonies where
Act applied
with local
modifications.

A typical example of this kind of colonial legislation is given in the Hong Kong ordinance set out in the Appendix. The changes are limited to, (*a*) providing that the Governor shall perform the duties of the Secretary of State: (*b*) giving the powers of the police magistrate to the local magistrate; and (*c*) indicating the colonial gaol as the prison referred to in the Act. Strictly speaking (*a*) is unnecessary, for the Governor may still derive his powers from s. 17 (2), to act in lieu of the Secretary of State, although he ceases to act as police magistrate.

In these colonies, therefore, the Act, with these substitutions works as it does in England.

The last category of colony is where the whole law of extradition in all its details is dealt with by the Colonial Legislature. In this case the Acts of the United Kingdom are totally suspended. Canada is the only part of the Empire which has exercised this power of legislation.

Colonies where
extradition is
governed by
local legislation.

With this explanation the provisions of s. 18 will be better understood. It will be observed that the different kinds of colonies are referred to in the inverse order to that adopted in the above explanation. Its provisions are as follow:—

If by any law or ordinance, made before or after the passing of this Act by the Legislature of any British possession, provision is made for carrying into effect within

Chap. IV.
Sec. 1.

Saving of laws
of British
possessions.

such possession the surrender of fugitive criminals who are in or suspected of being in such British possession, His Majesty may, by the Order in Council applying this Act in the case of an foreign State, or by any subsequent Order, either—

suspend the operation within any such British possession of this Act, or of any part thereof, so far as it relates to such foreign State, and so long as such law or ordinance continues in force there, and no longer;

this is the case of Canada;

or direct that such law or ordinance, or any part thereof, shall have effect in such possession, with or without modifications and alterations, as if it were part of this Act.

this is the case of Hong Kong, and nearly all the other colonies and possessions.

Two other definitions in s. 26 must be noticed here.

The term "Legislature" means—

any person or persons who can exercise legislative authority in a British possession, and, where there are local legislatures as well as a central Legislature, means the central Legislature only.

The term "Governor" means—

any person or persons administering the government of a British possession, and includes the Governor of any part of India.

SECTION II.

The application of the Treaties to the Colonies.

A special chapter will be devoted to the consideration of the treaties; it will, however, be convenient at once to study the provisions which are made in them with regard to extradition from and to the British colonies.

In the case of those countries which have no foreign possessions the treaty is one-sided, and article XVII of the treaty with the Argentine may be taken as typical.

Saving of laws
of British
possessions in
the treaties.

The first paragraph provides that the treaty shall be applicable to the British colonies "so far as the laws for the time being in force in them will allow." By this saving of colonial laws the foreign country recognises the right of the colonies to legislate on the subject of extradition. There are further references in the other paragraphs, to be alluded to presently.

The requisition is to be made to the Governor or chief authority of the colony by the chief consular officer of the Argentine in the colony. The difficulty already alluded to, that there may be no such officer, is dealt with in some treaties, as in that with Roumania, where the article provides that the requisition may be presented "by any person authorised to act in such colony or possession as a consular officer of Roumania." In the treaty with Switzerland the point is still more carefully dealt with:—

"in case there should be no Swiss consul, [the requisition may be made] through the recognised consular agent of another State charged with the Swiss interests in the colony or possession in question."

The third paragraph provides that the requisition is to be disposed of subject "as nearly as may be" to the provisions of the treaty, "and so far as the law of the colony will allow."

A special provision is introduced, that the Governor "shall be at liberty either to grant the surrender or to refer the matter to his Government." The Secretary of State has no power under the Act in the colonies; but in virtue of his official position he may direct the Governor to act in so far as the law of the colony allows him to act; this provision, therefore, can only mean that the Governor may refer the matter to his Government for advice or instructions.

Reference by
Governor to
Secretary of
State.

Then follows this clause—

Her Britannic Majesty shall, however, be at liberty to make special arrangements in the British colonies and foreign possessions for the surrender of Argentine criminals who may take refuge within such colonies and foreign possessions, on the basis, so far as the law of such colony or foreign possession will allow, of the provisions of the present Treaty.

This third reference to the law of the colony, coming as it does in a paragraph expressly dealing with that law, is exceedingly confusing; and in article XVII of the Austrian treaty, both this and the previous references to the colonial law are omitted, this clause ending with the sentence, "on the basis, as nearly as may be, of the provisions of the present treaty." There can be little doubt that the clause as thus worded is amply sufficient to ensure the recognition by the foreign Government of the colonial power of legislating on the subject, in either the partial or the complete form referred to in s. 18. The references to the colonial

Chap. IV.
Sec. II.

law in the earlier paragraphs of the article in the Argentine treaty seem, therefore, to be superfluous.

The clause is drafted some what differently in the treaty with Brazil, and in some others.

As Her Britannic Majesty has the power to adopt special arrangements in the colonies and possessions, respecting the delivering up of delinquents, Her Majesty will facilitate the reclamations of Brazil in this respect, as far as may be possible, with due regard, however, to the provisions of this Treaty.

Requisitions
from British
colonies,

The last clause of the colonial article deals with requisitions from the British colonies; they are to be governed by the rules laid down in the treaty for requisitions from England. The subject of extradition to the dominions not being dealt with in the Act, but only extradition from the dominions, the procedure is governed entirely by the treaty; it would seem, therefore, as if the requisition must be presented to the foreign Government by the Secretary of State, and not by the Governor; but it is doubtful whether this is adopted in practice.

to foreign
colonies.

But in treaties with countries which have foreign possessions, the colonial article is bilateral, applying to the colonies of both Powers. It is drawn sufficiently generally to allow the arrangements for surrender to be made between the colonies interested.

In the Act of the Commonwealth of Australia, the following special provision deals with the procedure relating to requisitions for the surrender of fugitives from foreign countries:—

Extradition from
foreign States
to Australia.

6. Where the Extradition Act, 1870, applies in the case of any foreign State, a requisition for the surrender of a person, accused or convicted of an extradition crime in the Commonwealth, who is or is suspected to be in that foreign State, may be made by the Attorney-General to a Consular Officer of that State in the Commonwealth, or to any Minister of that State through the Diplomatic Representative of His Majesty in that State, or in such other mode as is settled by arrangement.

7. Any person accused or convicted of an extradition crime who is surrendered by a foreign State may, under the warrant for his surrender issued in the foreign State, be brought into the Commonwealth and delivered to the proper authorities to be dealt with according to law.

I believe that this and a similar provision in the Canadian Act, are the only instances in which the subject is dealt with.

SECTION III.

The Extradition Laws of the Colonies.

For convenience of reference a list of the colonies will now be given in which the powers given by s. 18 of the Act have been exercised; in all others not included in the list the Act as modified by s. 17 is in force.

Class I.—*Colonies where the local legislation is alone in force.*

The Dominion of Canada is the only possession in which an Act has been passed dealing comprehensively with the subject, and in which, therefore, the English Act is completely suspended during the continuance of the local law. This Act is given in the Appendix, as well as the Act providing for extradition to foreign States with which there is no arrangement, or with which there is an arrangement which does not include the crimes mentioned in the schedule. This Act lies altogether outside the operation of the English Act, which only applies where there is an arrangement. It is therefore not put in force by Order in Council. A provision similar to the latter Act exists in the Straits Settlements; but this was made by Order in Council.

Canada.
cf. note to the Act Appendix, p. 263.

cf. post, p. 187.

In nearly all the Orders in Council applying the Act to the treaties, there is a Canadian clause to the following effect:—

Provided always, and it is hereby further ordered, that the operation of the said Extradition Acts, 1870 and 1873, shall be suspended within the Dominion of Canada so far as relates to [*e.g.*, the Argentine Republic], and to the said Treaty, and so long as the provisions of the Canadian Act aforesaid continue in force and no longer.

Canadian clause in the treaties.

In some treaties, however, it is omitted, as in the case of Brazil. In the case of Austria it was omitted, but was inserted in the Order bringing into force the Supplementary Declaration. In the case of Germany it was omitted, but was inserted in the Convention of 1894, which was limited to the Dependencies of Germany. In Bolivia the clause took the general form, suspending the Acts generally in Canada, but without any reference to the treaty in question. It is not very clear why these clauses exist at all, because there is a special Order suspending the

Canada Order in Council.

The list has been compiled from the "Statutory Rules and Orders."

Chap. IV.
Sec. 111.

* at p. 273.

operation of the Acts generally in Canada, so long as the Canadian Act continues in force. This Order will be found in the Appendix.*

The only other reference to Canada in the treaties is in article XVI of the treaty with the Netherlands which excludes Canada from the arrangement that each country renounces any claim for repayment of the expenses of surrender. In the case of Canada they are to be borne by the State demanding the surrender.

Class II—*Colonies in which the Act as modified by local legislation is in force.*

	ORDER IN COUNCIL.	LOCAL LAW.
Australian Commonwealth		
[South Australia; Western		
Australia; Queensland;		
Tasmania; Victoria].	... 7th March, 1904 ...	... Act, 1903.
Bahamas. ... ..	... 13th August, 1877 ...	... „ 1877.
Barbados. ... ..	... 27th November, 1878 ...	... „ 1878.
Bermuda. ... ..	... 4th February, 1879 ...	... „ 1877.
British Guiana ... ..	... 7th July, 1897... ..	... Ordinance, 1897.
as to French Guiana.	... 24th September, 1886 ...	... „ 1886.
British Honduras ... ..	... 22nd February, 1878 ...	... „ 1877.
Cape of Good Hope ... ..	... 15th January, 1878 ...	... Act, 1877.
Ceylon ... ..	... 4th February, 1878 ...	... Ordinance, 1877.
Gibraltar ... ..	... 11th July, 1877... ..	... „ 1877.
Gold Coast ... ..	... 23rd November, 1877 ...	... „ 1877.
Grenada .. ... ..	... 18th March, 1880 ...	... „ 1880.
Hong Kong ... ..	... 20th March, 1877 ...	... „ 1875.
India (British) ... ..	... 7th March, 1904 ...	... Act, 1903.
Jamaica ... ..	... 23rd November, 1877 ...	... „ 1877.
Leeward Islands ... ..	... 26th March, 1878 ...	... „ 1877.
Malta ... ..	... 29th June, 1878 ...	... Ordinance, 1877.
Mauritius ... ..	... 11th July, 1877... ..	... „ 1877.
Natal ... ..	... 4th February, 1878 ...	... Law, 1877.
Newfoundland ... ..	... 29th January, 1900 ...	... Act, 1899.
New Zealand ... ..	... 13th May, 1875... ..	... „ 1874.
St. Lucia ... ..	... 15th January, 1878 ...	... Ordinance, 1877.
St. Vincent ... ..	... 6th September, 1880 ...	... „ 1880.
Sierra Leone... ..	... 27th November, 1878 ...	... „ 1878.
Straits Settlements ... ..	... 11th July, 1877... ..	... „ 1877.
Trinidad ... ..	... 11th July, 1877 ...	... „ 1877.
as to French Guiana	... 20th November, 1894 ...	... „ 1894.
Tobago ... ..	... 28th June, 1880 ...	... „ 1880.

The colonial laws rarely go beyond the simple provisions which are contained in the Hong Kong Ordinance set out in the Appendix. In the case of British Honduras there is a further provision dealing with the power given to the Judges in England with regard to discharge of the fugitive when not conveyed out of the Kingdom within two months, vesting the power in the Chief Justice or Acting Chief Justice alone.

Chap. IV.
Sec. III.

cf. ante, p. 181.

In addition to these laws there are in some colonies special arrangements with regard to neighbouring States. It has been unfortunately impossible to give a complete list. The arrangements between British Guiana and Trinidad with French Guiana are referred to in the above Table.

Special
arrangements in
the dominions.

French Guiana.

In the treaty with France, the arrangement established in the East Indian Possessions of the two countries by the Treaty of 1815, is preserved; this provides for mutual surrender between British India and Pondicherry and Chandernagore. In the Act itself, s. 23 provides for saving treaties of extradition made by the Governor-General of India in Council with the Native Indian States, or with other Asiatic States coterminous with British India. §

French India.

In Hong Kong there is special legislation dealing with extradition to China under the Treaty of Tientsin; and also with extradition to Macao and British North Borneo.

Hong Kong.

In the Straits Settlements extradition to foreign countries in the case of which the Extradition Act does not apply, and to the Protected States, is sanctioned by Order in Council, 19th August, 1889, as amended by the Order of 1901. The schedule contains a list of crimes identical with those in the schedules of the English Acts of 1870 and 1873, and the surrender is made subject to the absolute discretion of the Governor of the Straits Settlements. The Protected States are defined as Perak, Salangor, Sungei Ujong, Johore, Pahang, the Confederation or Group of States known as the Nègri Sèmbilan, and (by the Order of 1901) the Territory of the British North Borneo Company.

Straits
Settlements.

Federated Malay
States.

The following Malay States were included in the British Protectorate, by the treaty with Siam of 10th March, 1909—Kelantan, Trengganu, Kedah, Perlis, and the adjacent islands; *see* the Siam Order in Council, 28th June, 1909.

§ A list of these treaties is not available in the Colony.

CHAPTER V.

Extradition without Agreement, and under Unilateral Agreements.

SECTION I.

Extradition in Protectorates.—Foreign Jurisdiction.

WE must now carry our study of the subject one step further, passing from the colonies to those territories which are not within the dominions, but which are under the protection of the King; and lastly, to those foreign countries in which the King exercises foreign jurisdiction. This involves the consideration of two variations from the common form of the subject; extradition independently of agreement, and extradition under a unilateral agreement. Of the former we have already had one example in the Canadian Act of 1889.

Unilateral
arrangements
for extradition;

limited to one
colony.

If an arrangement were made with a foreign country to surrender fugitives from one of our adjacent colonies, save only for the question which arises in connexion with s. 19, no Order in Council would be necessary. On the other hand, if a unilateral treaty were entered into with any country to surrender fugitives from the United Kingdom, or from any part of the dominions, the Act could be applied to it by Order in Council; for the treaty deals with what the Act deals with, and s. 19 would remain inoperative. The application of the Act would be limited in accordance with the terms of the arrangement. There may, however, be reasons of convenience, why, if the arrangement is limited to one colony, the Act should not be applied, but the question be entirely governed by local legislation; minor modifications, necessary to fit the Act to local conditions, would be more easily dealt with locally. Local legislation is also made use of where there is bilateral arrangement between two adjoining territories belonging to different countries; though in this case Orders in Council are sometimes resorted to.

Of these different classes, the following are examples;—

Chap. V.
Sec. I.

Tonga: where the arrangement is to surrender Tongan subjects from any part of the British dominions, without reciprocity.

China: where the arrangement is to surrender Chinese subjects from Hong Kong.

Hong Kong and Macao: where extradition from the British to the Portuguese colony is sanctioned by Hong Kong legislation, independently of agreement.

British Guiana and French Guiana: where a reciprocal arrangement is enforced by Order in Council.

The extradition article of the treaty with Siam is limited in its operation to part of that country and Burmah, and, like extradition between French and British India, is probably enforced by Indian legislation. § *cf. Appdx. p. 260.*

But this does not exhaust the necessities of extradition throughout the Empire and its spheres of influence. The colonial articles of the treaties, like ss. 18 and 19 of the Act, only apply to "colonies and possessions;" Protectorates are neither, and therefore do not come within these articles. It should, however, be noted that we have made a special arrangement with Germany in regard to her spheres of influence in Africa, New Guinea, and the Pacific Ocean; and with France in respect of her protectorate in Tunis. These arrangements are bilateral, because the treaties with Germany and France are respectively extended; but they are not reciprocal in the sense that they extend the treaties to our own Protectorates. *Extradition in Protectorates. cf. ib. p. 111. cf. ib. p. 262.*

Protectorates are governed under the Foreign Jurisdiction Act, 1890, and the King's foreign jurisdiction is exercised by Order in Council; therefore, if there is any extradition from or to such territories, we must look for it in an Order. *53 & 54 Vict. c. 37.*

Before examining the consequences of these different forms of legislation, the bearing on the subject of this and another statute—the Fugitive Offenders Act, 1887, must be referred to. The object of the latter, to be more fully examined in a subsequent chapter, is to apply the principles of extradition to the Empire. It differs from the Extradition Act in this important particular, that it applies to a much larger area of crime—to all offences punishable "either on indictment or information, by imprisonment with hard labour for a term of 12 months or more, *The Fugitive Offenders Act; 44 & 45 Vict. c. 69.*

§ There are no books available in the Colony which would enable me to give the necessary references.

Chap. V.
Sec. 1.

or by any greater punishment." It applies to all persons, subjects and aliens, who have committed offences in one part of the Empire and escaped to another part. But its limitations are obvious; directly the fugitive has got beyond the dominions, it is powerless, and both subject and alien come under the Extradition Act with its limitations. This may be illustrated by the following example—If a Frenchman from Réunion were to commit an offence within the above definition in Mauritius, and escape to Australia, he could be sent back to Mauritius under the Fugitive Offenders Act; but if he had escaped to New Caledonia he could only be dealt with under the Extradition Act, and Mauritius must ask for his surrender; and he is not liable to surrender if his offence is not within the treaty with France.

extended to
Protectorates.

Reverting to Protectorates, the extension of the Fugitive Offenders Act to them comes within the general powers of legislation which is implied in protection; therefore, so far as this Act is concerned, they can be brought within the Empire, and power is taken in s. 36 of the Act itself so to extend it by Order in Council. But at this point there is a hiatus, and in the absence of any special arrangement, the question of extradition becomes somewhat complicated, and it can only be solved by reference to first principles. The Extradition Act does not apply unless there is an "arrangement" with a foreign State; the arrangements actually in existence do not cover Protectorates; therefore the Act cannot be applied, and recourse must be had to Orders in Council. The question how far such an Order may go is purely theoretical; but, fortunately, we have an example of such an Order in the case of Cyprus; and an examination of it will reveal the most scrupulous regard to the principles of the subject, and furnish us with an object-lesson of their application to extradition independently of arrangement.

SECTION II.

The Cyprus Order in Council, and the Canadian Act of 1889.

Extradition
independently of
arrangement.

Although the Act of 1870 is based on arrangement, it is clear that there is nothing to prevent legislation being passed to authorise the surrender of fugitives independently of arrangement; nor is there anything to prevent a foreign State asking for the surrender of a fugitive from justice, although it has not entered into

an arrangement. It cannot be done without the authority of Parliament; but if Parliament so chooses, the request may be granted. We are now familiar with the points which must be dealt with in such a statute—the arrest must be authorised, the jurisdiction of the magistrate or other examining officers must be created, and the functions of the different executive officers must be defined. All this is provided for in the Cyprus Order, § the general power being defined as follows:—

Chap. V.
Sec. II.

cf. p. 181.

In the circumstances and under the conditions in this Order prescribed, persons found in Cyprus, and accused or convicted of offences committed in foreign countries, or in any part of the Ottoman dominions other than Cyprus, shall be given up to the respective Governments of those countries, or to the Ottoman Government, as the case may be, for trial there, or, in the case of persons so convicted, for the purpose of undergoing lawful punishment for the offences of which they were convicted.

Extradition from
Cyprus;

The general scheme of the Order, the list of extradition offences, and the forms, follow, with the necessary changes, the English Act.

Then as to extradition to Cyprus. There is nothing to prevent the High Commissioner requesting a foreign country to surrender a fugitive, nor anything to prevent the foreign Government complying, so long as it fulfils the conditions of its own law, with which we have nothing to do. Once the fugitive is in Cyprus, he may, as we have seen, be tried, and no provision is necessary. other than one corresponding to the English s. 19. The fact that its execution is limited to the jurisdiction does not prevent the issue of a warrant of arrest although the person is abroad; for convenience, however, this is specially provided for in article 39 of the Order.

and to Cyprus.

cf. p. 171.

§ Our position in Cyprus is defined by the Convention of Defensive Alliance with Turkey, of 4th June, 1878:—"His Imperial Majesty the Sultan further consents to assign the Island of Cyprus to be occupied and administered by England."

As explained in another work, the rights acquired under this treaty do not differ in character from those exercised by the King under a treaty conferring extr territorial rights to British subjects; they are therefore properly exercised under the Foreign Jurisdiction Act, 1890, which recites, that "by treaty, capitulation, grant, usage, sufferance, and other lawful means, Her Majesty the Queen has jurisdiction within divers foreign countries;" and it empowers its exercise "in the same and as ample a manner as if Her Majesty had acquired that jurisdiction by the cession or conquest of territory."

cf. Exterritoriality,
p. 10.

53 & 54 Vict.

c. 57.

Chap. V.
Sec. II.

With a view to a request to be made by the High Commissioner to a foreign Government or to the Ottoman Government for the extradition of a fugitive, the High Court may, if it thinks fit, on a suggestion on behalf of the High Commissioner, and on a sworn information, issue its warrant for the apprehension in Cyprus of the fugitive.

The expression "for the apprehension in Cyprus," in regard to the warrant will be noticed.

Thus the Order is complete in all its parts, theoretically and practically, and we find in it extradition in its purest form. It is the Act unfettered by the arrangements; surrenders are governed by the schedule of the Order only, and are not complicated by the different treaty lists.

Protectorates
without Order
in Council.

But from Protectorates in which there is no Extradition Order, there can be no surrender; and I think I am right in saying that Cyprus is the only Protectorate which at the present time has such an Order.

Surrender from
Canada without
arrangement;

The Canadian Act of 1889, is another example of legislation sanctioning extradition independently of arrangement, and may appropriately be referred to here. It is in addition to the special Act which deals with extradition by arrangement, and was passed in view of the recommendations of the Royal Commissioners on the subject.

cf. p. 18.

The Act provides that—

"in case no extradition arrangement within the meaning of the Extradition Act [*i.e.* of Canada], exists between Her Majesty and a foreign State, or in case such an extradition arrangement extending to Canada exists between Her Majesty and a foreign State, but does not include the crimes mentioned in the schedule to this Act,

it shall nevertheless be lawful for a warrant for the surrender of the fugitive to be issued; the procedure being thereupon governed by the Canadian Extradition Act. The Act is to come into force with regard to any foreign State by proclamation of the Governor-General.

from the Straits
Settlements;

The Straits Settlements Order in Council, 1889, which has already been referred to, which sanctions extradition to "foreign countries in the case of which the Extradition Act does not apply," is the only other example of general legislation of this kind.† The Ordinances of Hong Kong providing for extradition

and from
Hong Kong.

† In the case of the Federated Malay States, extradition from the Straits Settlements is allowed where the fugitive is accused or has been convicted of a breach of a contract of service to be performed within the jurisdiction

to Macao and British North Borneo, are of the same class, but they are limited to certain specified countries.

Chap. V.
Sec. II.

SECTION III.

The Treaty of Tientsin, Art. XXI.

We must now go one step further, and consider the case of a country under the lesser forms of foreign jurisdiction which do not amount to complete protection, as in the case of China. Extradition to
China from
Hong Kong.

In art. XXI of the Treaty of Tientsin, it is provided that—

If criminals, subjects of China, shall take refuge in Hong Kong, or on board the British ships there, they shall, upon due requisition by the Chinese authorities, be searched for, and, on proof of their guilt, be delivered up.

In like manner, if Chinese offenders take refuge in the houses or on board the vessels of British subjects at the open ports, they shall not be harboured or concealed, but shall be delivered up, on due requisition by the Chinese authorities, addressed to the British Consul.

The position which this arrangement holds is as follows. It was not enforced by home legislation prior to 1870, and therefore the repeal clause, s. 27, of the Act does not apply to it. After the passing of the Act of that year, it could have been enforced by Order in Council under the Act, the Order being limited to Hong Kong. But the difficulty was that the arrangement was of the vaguest nature, referring only to "criminals, subjects of China"; and the schedule must, at first sight, have seemed inapplicable. The article of the treaty had in fact been enforced by local legislation of Hong Kong, No. 2 of 1850. This ordinance, following the terms of the article, provided that—

if any complaint or information, or any communication by any officer of the Chinese Government be made or forwarded to any magistrate or Court, (other than the Supreme Court), desiring the arrest of any person being a Chinese subject and then within the said colony of Hong Kong, and alleging that such person has committed, or is charged with having committed, any crime or offence against the laws of China,

of the requisitioning Malay State, "which, if it had been committed in the Colony, and the contract broken had been a contract to be performed in the Colony, would have been punishable under the law of the Colony with imprisonment or with fine, and with imprisonment in default of payment of such fine."

Chap. V.
Sec. III.

the magistrate might issue a warrant for his apprehension. The section went further, and extended the Act to the case where it should "appear in the course of any investigation before such magistrate or Court, that any person had committed any such crime or offence"; in such circumstances, the same procedure might be followed.

The Ordinance further provided that—

in any such warrant of arrest, or any subsequent warrant of committal or other warrant, it shall be sufficient to describe the crime or offence of such person in terms the same as, or similar to, those contained in such complaint, information or communication aforesaid.

*A.-G. of Hong Kong
v. Kwok A. Sing.*
L.R. 5 P.C. 179.
cf. ante, p. 72.

Then came *Kwok A Sing's case*, in 1873, which has already been examined. In the quotation from the judgment given on p. 74, the Judicial Committee insisted that the extreme generality of the words was not to prevail, but that some limitation must be introduced. The limitation indicated was "that the words 'crimes and offences' ought to be confined to those ordinary crimes and offences which are punishable by the laws of all nations, and which are not peculiar to the laws of China." The Committee considered, further, that it might be assumed that China had laws punishing its subjects for such offences.

It would appear that the Chinese Government acquiesced in this interpretation; and in 1889, a new ordinance was passed in Hong Kong, based in all essential particulars on the English Act of 1870. A schedule of offences is given which corresponds when the schedules of 1870 and 1873, the Criminal Law Amendment Acts of 1861 being replaced by the local ordinances of 1865, which are based on those Acts; and in s. 72, the definition clause, it is provided that—

the crimes mentioned in the schedule shall be construed according to the law in force in the Colony at the date of the alleged crime.

We must now see what the effect of this legislation is. It is, in the first place, like the arrangement, limited to Hong Kong. Extradition to China from other parts of the dominions is therefore not possible, because the Act of 1870 is limited to countries with which there is an arrangement. It is possible, however from Canada, Cyprus, and the Straits Settlements, under the laws which have been considered in this chapter.

Extradition to
China from other
parts of the
dominions.

cf. p. 190.

In the second place, there is no corresponding arrangement with China for the surrender of British subjects either to Hong

Kong or the British dominions. The hiatus here is filled by the joint operation of the Foreign Jurisdiction and Fugitive Offenders Acts. British subjects are subject to the British Consular Courts in respect of offences committed in China: offences, that is, against the law of England to which they are subject; and for offences committed in Hong Kong or in any other part of the dominions, including the Protectorates, they are liable to be returned to the place whence they have fled. They may therefore be returned from Hong Kong to the jurisdiction of the British Consular Court, and *vice versa*.

Chap. V.
Sec. III.

Position of
British subjects
in China;

British subjects who have committed offences in other countries and who have fled to China cannot be dealt with by the British Consular Courts, for they have no jurisdiction except over offences committed in China; nor can they be dealt with by any foreign Consular Court, for they have no jurisdiction except over their nationals.

who have
committed
offences
elsewhere.

Next, as to foreigners who have committed offences in Hong Kong, or in any other part of the dominions, and have escaped to China. Although in normal circumstances they fall within the Fugitive Offenders Act, they cannot be surrendered from China, because while in China they are within the exclusive jurisdiction of their own Consular Courts. The question whether those Courts have jurisdiction in such a case depends, first, on whether their national law applies extra-territorially to them, so as to cover the offence committed in British territory; secondly, whether their national Consular Court in China can enforce such an extra-territorial law. And as to foreigners who have committed an offence in China against their national law in China, and have escaped to Hong Kong, they cannot be surrendered, for the extension of the Fugitive Offenders Act is limited to our own Consular Courts; they do not come within the extradition article of the Treaty of Tientsin, for that is, and could only be, limited to Chinese subjects; and the extradition treaties do not apply to them, for they are limited to offences committed within the territories of the Contracting Parties. Difficulties of this kind must inevitably arise in the mixed communities of the East in consequence of the imperfect state of the law; but they can only be dealt with by international agreement.

Position of
foreigners
escaping to
China;

and escaping
from China to
Hong Kong.

The Friendly Islands, and many other groups of islands in the Pacific which are British settlements, or are under British protection, or in which there is no civilised government (in the

Islands in the
Pacific.

Chap. V.
Sec. III.

Tonga.

last two cases, in respect only of British subjects), are governed by the Pacific Ocean Order in Council, of 15th March, 1893. The Fugitive Offenders Act is extended to these islands by the Order; but this is supplemented in the case of Tonga, by a unilateral extradition treaty with the King, of 29th November, 1879, embodied in the Order in Council of 30th November, 1882, which is set out in the Appendix.

The essential difference between this treaty and the arrangement with China is that the obligation to surrender Tongan subjects is undertaken with regard to the whole of the British dominions. The Protocol also deals with the point to which allusion has been made in connexion with the Treaty of Tientsin, the interpretation of the treaty provisions by English law.

Corea.

There is no extradition clause in the treaty with Corea; but a modified form of extradition, necessitated by the conditions of extritoriality, is provided for in article III, which is a developed form of the second paragraph of the article in the treaty with China.

ix. If a Corean subject who is charged with an offence against the laws of his country, takes refuge in premises occupied by a British subject, or on board a British merchant vessel, the British consular authorities, on receiving an application from the Corean authorities, shall take steps to have such person arrested and handed over to the latter for trial. But, without the consent of the proper British consular authorities, no Corean officer shall enter the premises of any British subject without his consent, or go on board a British ship without the consent of the officer in charge.

x. On the demand of any competent British consular authority the Corean authorities shall arrest and deliver to the former any British subject charged with a criminal offence, and any deserter from a British ship of war or merchant vessel.

CHAPTER VI.

Extradition of deserters from Merchant Ships.

A special form of extradition by arrangement is provided by s. 238 of the Merchant Shipping Act, 1894, which takes the place of the Foreign Deserters Act, 1852.

57 & 58 Vict.
c. 60.
15 & 16 Vict.
c. 26.

238. (1) Where it appears to Her Majesty that due facilities are or will be given by the Government of any foreign country for recovering and apprehending seamen who desert from British merchant ships in that country, Her Majesty may, by Order in Council, stating that such facilities are or will be given, declare that this section shall apply in the case of such foreign country, subject to any limitations, conditions and qualifications contained in the Order.

Reciprocal arrest
and surrender of
deserters from
merchant ships.

(2) Where this section applies in the case of any foreign country, and a seaman or apprentice, not being a slave, deserts when within any of Her Majesty's dominions from a merchant ship belonging to a subject of that country, any Court, justice or officer that would have had cognizance of the matter if the seaman or apprentice had deserted from a British ship shall, on the application of a consular officer of the foreign country, aid in apprehending the deserter, and for that purpose may, on information given on oath, issue a warrant for his apprehension, and, on proof of the desertion, order him to be conveyed on board his ship or delivered to the master or mate of his ship, or to the owner of the ship or his agent, to be so conveyed; and any such warrant or order may be executed accordingly.

(3) If any person harbours or secretes any deserter liable to be apprehended under this section, knowing or having reason to believe that he has deserted, that person shall for each offence be liable to a fine not exceeding £10.

This section is by its terms imperial legislation, and therefore the subject matter of it does not fall within the powers of legislation given to Colonial Legislatures by s. 264, in respect of matters dealt with in Part II of the Act.

The following is list of Orders in Council extending the provisions of the Act of 1852, or of s. 238 of the Merchant Shipping

Chap. VI.	Act, in virtue of treaties made with the several foreign countries.	
Deserters orders in Council.	Austria Hungary	16th October, 1852.
	Belgium	8th February, 1855.
	Brazil	17th November, 1888.
	Colombia	28th December, 1866.
	Congo State ... ..	...10th August, 1888.
	Denmark ... ..	... 15th July, 1881.
	Ecuador ... ..	... 24th September, 1886.
	France ... ..	... 3rd July, 1854.
	Germany ... ..	... 18th March, 1880.
	Greece ... ..	... 12th July, 1887.
	Honduras... ..	... 26th September, 1901.
	Italy ... ..	... 11th June, 1863.
	Japan ... ..	... 9th October, 1903.
	Mexico ... ..	... 28th May, 1889.
	Morocco and Fez ... ..	... 6th May, 1857.
	Netherlands ... ..	... 9th March, 1854.
	Paraguay ... ..	... 29th December, 1887.
	Peru ... ..	...18th August, 1852.
	Roumania ... ..	... 29th February, 1908.
	Russia ... ..	...27th August, 1860.
	Salvador ... ..	... 11th June, 1863.
	Siam ... ..	... 10th November, 1866.
	Spain... ..	... 23rd January, 1860.
Sweden and Norway ... ..	...18th August, 1852.	
Turkey ... ..	... 18th May, 1865.	
United States of America ... ..	...18th August, 1892.	
Uruguay .. ..	... 24th September, 1886.	
Zanzibar ... ..	... 7th March, 1887.	

Deserters from
Portugese ships.

There is further a special Act—12 & 13 Vict. c. 25, amended by 39 & 40 Vict. c. 20, s. 2,—for giving effect to the stipulations of the 16th article of the Treaty of Commerce between Great Britian and Portugal, of 3rd July, 1842, for the apprehension of apprentices or sailors deserting from vessels belonging to the subjects of either Power, while such vessels are within any port in the territory of the other. The provisions for the arrest and the penalty for harbouring, are similar to those contained in s. 238 of the Merchant Shipping Act given above.

The Act applies to the dominions, but power is granted to any Colonial Legislature to pass laws for carrying the treaty into effect in the colony in substitution for it; such laws being put in force by Order in Council. This power does not seem to have been exercised in any colony.

CHAPTER VII.

The Treaties.

SECTION I.

Preliminary Considerations.

THE position of the treaties in the scheme of extradition differs from that of the Act in this important particular, that while the Act, except s. 19, is unilateral, prescribing only the procedure to be followed in England in surrendering fugitive criminals to foreign States, the treaties with the European and American States are bilateral, and establish the principles which are to govern both Contracting Parties; they therefore give us the nearest approach to something which, were there not so many variations both of principle and detail, might be called the law of the subject.

The treaties are reciprocal undertakings; but in a subject which, although it involves high questions of inter-national duty, must trespass into the domain of the law and legal procedure, it is obvious that reciprocity cannot extend much beyond broad details. But then there is this peculiar feature about the subject. It will be evident from all that has been said on the constitutional questions with which, from our point of view, the subject bristles, that there is one important factor missing in order to our complete comprehension of it from the inter-national or treaty aspect of it. On our side, there are three distinct branches of enquiry; first, the fundamental principles of liberty; secondly, the statement in the Act how far Parliament will sanction their being set aside; thirdly, the statement in the treaties of the extent to which they have been set aside in each case. But when we turn to the other side of the question, the law of the foreign country, we have nothing but the treaties to look to, and they contain only the statement corresponding to the last of these English principles. We know nothing of the constitutional doctrines of foreign countries, still less how far legislative action or sanction is essential to the carrying out of

Constitutional
law of foreign
countries.

Chap. VII.
Sec. 1.

the treaty obligation. Of course, treaties which involve consequences as serious as does extradition, are not negotiated without a full study of the constitution and laws of each foreign country in turn. But so far as the public, and the English Courts, are concerned, what lies behind the provisions of the treaties is in darkness. Take even so simple a question as the liberty of the subject, and the right to a writ of *habeas corpus*, we do not know whether in any given foreign country there is anything corresponding to our writ; we do not know even whether the liberty of the subject extends to aliens, nor whether it is in the keeping of the Courts or the Executive. It is impossible not to be struck in studying the treaties with what seems a rather remarkable absence of any corresponding provisions on this subject, although the *habeas corpus* is in many of them expressly referred to in the articles dealing with procedure in England. Our attitude must, therefore, be one of confidence that due enquiry has been made, and that neither alien who has taken refuge on our shores, nor British subject, where subjects may be surrendered, has been needlessly given over to foreign systems of procedure too greatly at variance with our own. On one point especially, to which I have already referred, and must refer again, the examination of the prisoner, this consideration is of the utmost importance. But speaking generally, it does not need much knowledge of what are called the methods of diplomacy, to realise that the gaps between the signing of the treaties and the issue of the necessary Orders in Council, have been profitably employed.

It is essential to bear these preliminary considerations in mind, for, although it is perhaps too much to say that any legal question depends on it, it will at least enable the treaties to be read with understanding.

Provisions of
the Act repeated
in the treaties;

The first point which must be made clear to start with, is why it was necessary to recapitulate in the treaties, as has been done, the language of the Act. The answer, so far as England is concerned, is that laws are liable to change; and although the business of the diplomatic agents is to report home all changes in the law which affect their nationals, diplomatic representation is the limit to which it is permissible for the voice of another country to be heard in regard to legislation. Therefore the articles of the treaty repeat in almost identical language the machinery clauses of the Act. This furnishes to the other Contracting Party a guarantee of permanence in our procedure.

While, therefore, the Act operates as a check on the treaty prerogative in extradition, the treaty reacts as a check on Parliament, and prevents any radical changes in our own procedure. Suppose such a thing possible, and an Act passed altering some fundamental principle of the procedure as now established, notices terminating the treaties would be immediately given by all the Powers.

Chap. VII.
Sec. I.

Further, and more obviously, these machinery clauses ensure to England the adoption of an identical procedure by the other country, and guarantee its permanence. But this involves another important consideration. England does not settle her own treaties, her proposals have to be accepted by the country with which she is negotiating. Therefore, we get this remarkable fact, that other countries have accepted both the principles and the statutory language of the machinery clauses of the Act. And I think from this we may draw the satisfactory conclusion, that a country which can acquiesce in these principles and engage to act on them, is not likely to have constitutional doctrines, affecting this subject at least, very widely differing from our own.

ensures
permanence of
procedure.

Adoption of
English
procedure by
foreign countries.

Yet another point: this identity of language in Treaty and Act means that the two prerogatives, the King's and the Parliament's, have been worked in harmony. These considerations, affecting as they do both the High Contracting Parties to a series of treaties, entered into by this country with almost every country in the world, must lend stability to those doctrines on which extradition is worked, which have appeared at first study somewhat arbitrary; they have been universally accepted as convenient by the world in its dealings with this country. And so far as extradition arrangements with England are concerned, the machinery clauses of the Act have to all intents and purposes become the common forms of the subject; a fact which is probably responsible for the very marked tendency in the cases to look on the Act as the governing document instead of the treaty, which ought to be looked at in every case. This is of course obvious in the case of extradition crimes; but it is equally important in minor details, such as the delays within which certain things have to be done. And in more important matters also, as we shall presently see. A comparative study of the treaties entered into between other countries would be interesting, in order to see how far these principles are of general adoption. The materials for such a study exist in Mr. Kirchner's valuable compilation of treaties.

Chap. VII.
Sec. I.

Want of
uniformity in
the treaties.

But when this is said there is no more to be said on this important question of uniformity; for the more the texts of the treaties are studied the more their lack of uniformity becomes apparent. In many minor matters this seems to be due not so much to questions of principle which may have given rise to difficulties during the negotiations, but to a desire to improve the drafting of the constant clauses. The clause dealing with offences which have been prescribed, affords a good example of this. It is subject to variations such as the following:—

Guatemala.

V.—The extradition shall not take place if, subsequently to the commission of the crime, or the institution of the penal prosecution or the conviction thereon, exemption from prosecution or punishment has been acquired by lapse of time, according to the laws of the State applied to.

Italy.

VI.—The extradition shall not be granted if, since the commencement of proceedings, or the conviction, such a length of time has elapsed as to bar the penal prosecution or the punishment, according to the laws of the State to which application is made.

The variations here, are in the language only; but sometimes questions of principle are involved in the changes. In the treaty with Cuba, the drafting, apart from the change in principle, takes this short form.

V.—Extradition shall not be granted if exemption from prosecution or punishment has been acquired by lapse of time, according to the laws of the State applying or applied to.

Yet another criticism of the treaties is inevitable; the English often leaves much to be desired; it gives the impression of being a translation of a treaty negotiated in a foreign language. These criticisms are not captious; and if they are appreciated they will tend to make the study of the treaties as a whole more easy. Familiarity with the treaties is as important as a complete knowledge of the Act.

Questions dealt
with in the
treaties not
touched in the
Act.

But the important point which the study of the treaties reveals is that they deal with many points which are not touched by the Act. There are a special set of principles which depend entirely on the treaties, which are none the less important because they have not so far given rise to much discussion. It is here that this want of uniformity makes the subject an

exceedingly difficult one to deal with; because, assuming a sound principle discoverable on any given question, a certain number of treaties only will be found adhering to it; all the others become exceptions, and the exceptions are often the more numerous. Some of these questions are strictly speaking subject to principles of jurisprudence. To cite one, of which examples have been given above—the effect of a law limiting the time within which a prosecution must be commenced. In some treaties effect is given to the law of the State applying or applied to, while in others the law of the State applied to alone governs the question.

Chap. VII.
Sec. 1.

This reference to jurisprudence is not at variance with what has already been said as to the non-existence of any law governing extradition, outside the Act and the treaties; because certain subjects are affected by extradition which are themselves governed by principles of jurisprudence; and the science of the law would be unworthy of the name if it could not give the answer to difficulties which arise in a new-created subject. No better example of this could be found than the argument of the American Court in *U. S. v. Rauscher*; for the learned Judge, arguing on abstract principles, came to the conclusion that a certain course was right, which was subsequently adopted as fundamental to the subject, both in the Act and the treaties.

cf. p. 5.
Certain questions
to be determined
by jurisprudence.

U. S. v. Rauscher,
12 Davis [U.S.] 407,
cf. ante, p. 61.

Then again, there are some questions which have been altogether omitted, both from the treaties and the Act; such as the effect of a pardon in either State. I have endeavoured to indicate the answer which jurisprudence would give, should the question arise, as it well might, in the Courts.

The treaties fall into two broad groups, one of which is much fuller in detail in the machinery clauses than the other. The main difference, apart from the alteration in the sequence of the clauses, is that in what may be called the "short form," the provisions for arrest and hearing are treated in one reciprocal clause; while in the "long form," the procedure in each country is dealt with in a separate clause, and a brief analysis of them will be given in a subsequent section. The two forms cannot be called the old and the new, because the short form has been used after the long form would appear to have been adopted. The division which comes nearest to accuracy is perhaps the "South American" and the "European," the long form being more frequently used in the case of the European States; but there are exceptions even to this.

Grouping of the
treaties.

Chap. VII.
Sec. 1.

Causes of want of
uniformity in the
treaties.

cf. p. 167.

Scheme of
examination of
the treaties.

Now with regard to these differences of treatment, small and great, on which I have dwelt, there are reasons which inevitably make for want of uniformity. Even supposing extradition were an exact science, it is not easy to be perpetually amending treaties; there are too many countries to be consulted, and too many questions to be considered. Supposing, for example, in the simple illustration I have given of the clauses dealing with prescription of offences, the concise form of the Cuban treaty were admitted to be the best drafting, it would be practically impossible to amend all the treaties in order to introduce it. The utmost that could be hoped for would be its consistent use in the future. But there are other difficulties in the way in more important matters. Take the case of the amendments introduced into the Act, by the Act of 1895, and into the French treaty, by the Supplementary Convention of 1896, in consequence of the difficulty which arose in the extradition of Dr. Hertz. The Spanish treaty, like some others, is drafted on the model of the French treaty, and the same difficulty may arise at any time; but these other treaties have not as yet been amended. To take one more concrete illustration from a still more important question. After the recommendations of the Royal Commission, it might perhaps be thought that we had got the last word on the question of surrendering subjects. But obviously, each country would have its own views on such a question. And then, extradition not being an exact science, the advisability of adopting the recommendation of the Commissioners, would have to be considered, even in our own case, in regard to each country with which we have treaties. The treaties must therefore be taken to be the only practical way of obtaining the advantages of extradition in the case of each country with which they are concluded.

I shall endeavour to make the examination of the treaties as concise as possible, considering only the broad principles which seem to be established in them, and so endeavour to formulate what may be called the treaty-law on the subject. Further, I do not propose to make a general comparative study of the contents of the different treaties; for in the first place, the result could only be a confused mass of details, so numerous and minute are the variations; and secondly, no system or method governs the whole series; the last treaty is not necessarily the most scientific. Whether in theory or in practice the treaties can only be usefully studied if we bear in mind the truism that in any

given case of extradition, it is quite immaterial what the treaties with all or any other countries may contain.

Chap. VII.
Sec. 1.

When in the following examination treaties are specifically cited, it is for the purpose of reference only. In some cases the examination will be found to be more elaborate than in others, but the reason for this will be apparent from the subjects so treated.

The first article, or the first clause of the first article, in all the treaties contains the mutual engagement to surrender fugitives from justice. It is always absolute, and subject only to the conditions contained in the articles which follow. Thus the first principle deducible from the treaties is that extradition is not a matter of discretion, except in the case of those which make the surrender of subjects discretionary.

The absolute
agreement to
surrender.

One small point of detail may be noticed. The engagement is entered into between the High Contracting Parties, the Sovereigns or Sovereign Authorities of the two countries; but the word "Government" is often introduced into some of the articles. Thus in the treaty with the Argentine, the discretion as to the surrender of subjects or citizens is reserved to "either Government."

SECTION II.

Extradition Crimes by Treaty.

We must first examine briefly the treaty lists of extraditable offences; but before doing so, it will be useful to summarise the results already arrived at as to the meaning and effect of these bilingual lists. The respective items are not translations of each other, nor are they necessarily identical; they are approximate and convenient equivalents, each having a determining effect on the extradition of any given individual. This effect is that the facts of the offence charged must come within both lists. That the equivalents should be set opposite each other is obviously convenient for purposes of reference; but Lord Russell, C.J., in *Arton's case* went further, and said that the equivalent of an offence charged in the requiring country might be found anywhere in the list of the requested country. The absence of systematic arrangement in the lists themselves, quite apart from the want of uniformity in the sequence of the crimes in the

Summary of
conclusions as
to effect of the
treaty lists of
crimes.
cf. pp. 109, *et seq.*

cf. p. 124.

Chap. VII.
Sec. II.

different treaties, goes far to support this. Of the former the following combination item in the Spanish treaty is typical. The English text is—

14. Burglary or house-breaking, robbery with violence, larceny or embezzlement.

The Spanish is simply "Hurto y robo."

Of the want of correspondence, even looking at them as equivalents, the following items from the French treaty are good examples—

9. Abduction.

9. Enlèvement d'un mineur au-dessous de 14 ans, ou d'une fille au-dessous de 16 ans.

21. Crimes against bankruptcy law.

21. Banqueroute frauduleuse.

cf. pp. 133. et seq.

Difficulties of finding uniform definitions of crimes under English and foreign law.

But the task which the negotiators of the treaty had before them must be appreciated. On the one side are the schedules of the English Acts, comprising both general and specialised definitions of crimes, by common law and statute. It might be imagined that the introduction of the Criminal Law Consolidation Acts of 1861, would have rendered the negotiation much simpler; for those comprehensive Acts, which for practical purposes may be called the English Penal Code, might well be assumed to omit nothing which was to be found in a foreign Penal Code. But it is impossible to overrate the difficulties of arriving at a uniform definition of any crime, however specialised, which will fit the jurisprudence of two countries. Moreover, these Acts are drawn with an almost exasperating minuteness of detail, the foreign Codes with considerable breadth. Given certain facts, known to be criminal, the lawyers in each country could easily find the section of the Act, or the article of the Code, to fit the case. But to do this in the abstract, with nothing concrete to guide, would involve infinite labour, and would inevitably lead to mistakes and slips; and, having in view the broad idea on which extradition is based, the labour would be exceedingly profitless; and interminable, for it would involve a hunt for the article of the Code corresponding with every one of the sections of our Acts. Take such a case as this; corruptly taking money to restore dogs, which is an indictable-offence under s. 20 of the Larceny Act; such an offence would probably fall under some broad head in a foreign Code. The converse case would be equally harrassing, as the cases shew in which

24 & 25 Vict.
c. 96.

the French crime of *faux*, with its many ramifications, was involved. In some cases which have already been considered, the Judges have hunted out the section of the Larceny Act within which the case fell; but, as I say, to undertake this before the facts arise, would be a hopeless and endless task. It would reveal, moreover, the fact that the assumption that the Acts of 1861, are, even with the amending Acts, complete is not warranted. Both Cave and Wills, JJ., referred to the serious omissions from our law in *re Belencontre*.§

Chap. VII.
Sec. II.

re Belencontre.
1891, 2 Q.B. 122.
cf. ante, p. 117.

The point, however, which is not easy to understand, is why in presence of this difficulty of establishing the equivalents, the lists in the treaties should not have been settled on broader lines, following the sub-divisional titles of our Acts and the sectional headings of the Codes. But particularity has been aimed at, and many of the difficulties with which the Courts have had to deal have arisen from it. And this has led also to some noticeable omissions, such as offences against nature, which do not figure in any of the treaties.

§ "Now, when one comes to deal with that point [whether the crime with which the prisoner was charged was a crime punishable by English law] one is struck with the superiority of the French criminal law over our own. We find there a perfectly clear and comprehensive definition of the offence which is made punishable. It is abuse of confidence or fraudulent misappropriation by any person who has been entrusted with property, a wide and general definition which embraces undoubtedly a good deal more than is expressed by our law on the same subject. Our law, unfortunately, instead of being in the form of a Code, or even of a well-drawn Consolidation Act, is a thing of shreds and patches, and one has to look to different portions of the statute in order to see to what extent a person who has been entrusted with property is made responsible for the fraudulent misappropriation of it. . . . Our criminal law is very much narrower on those points, and far less clear, than the law of France is. It is fenced round with exceptions, which make it difficult at times to apply it." (Cave, J.).

"I cannot help saying that I share a certain feeling of humiliation which my learned brother has expressed, when one is obliged to confess formally to a neighbouring country that a great part of the atrocious things which have been done by this man, if the evidence is to be relied on, are not punishable by English law. It does seem an extraordinary thing that a man being entrusted with money by other people for investment should be able to put it into his own pocket fraudulently and dishonestly, and yet commit no crime punishable by English law. I am reminded of a circumstance that was mentioned to me some time ago by a friend very greatly versed in the English criminal law. In the course of his studies he made out a list of the iniquitous things which could be done by the English law, without bringing the man under any provision of the common or statute law, and he had had it in his mind at one time to publish it, to shew how defective the law was, but he forbore on grounds of public policy to call attention to what people might do without rendering themselves liable to punishment. Certainly we have a very signal illustration of it with regard to the particular classes of fraud established in this case." (Wills, J.).

Chap. VII.
Sec. II.

Omissions of any crime may be due to several causes. Either the foreign country has declined to include it; or the law of the foreign country with regard to it may be such, may differ so widely from our own, that England herself may have declined to include it; or both countries may have considered it advisable to exclude it on account of this divergence.

The general
clause in some
treaties.

It is to be noted, however, that in some treaties, the list of crimes is followed by a general clause allowing extradition in the case of any other crime, provided that it is an extradition crime by the laws of both States. The clause is generally as follows:—

Extradition may also be granted at the discretion of the State applied to in respect of any other crime for which according to the laws of both the Contracting Parties for the time being in force, the grant can be made.

(Argentine Treaty, art. II).

I propose now to give, on the broadest lines possible, a general idea of the way in which the treaties define extradition offences.

Variations in
treaty definitions
of crimes.

The following crimes are generally found in the majority of the treaties, with more or less important variations, a few of which only are noted. I have been compelled to preserve the same absence of method in the arrangement of the crimes which prevails in the treaties.

Administering drugs, or using instruments with intent to procure the miscarriage of women;

sometimes limited to “procuring miscarriage” [Roumania]; defined simply as “abortion” in the French treaty.

Rape;

“by force or threats” added [Brazil].

Indecent assault;

sometimes called “aggravated or indecent assault” [Guatemala]; in which case it is usually coupled with carnal knowledge.

Kidnapping;

False imprisonment;

“Kidnapping of minors, including their false imprisonment” [Netherlands];

limited to the offence when committed by private individuals [Roumania: protocol];

Child-stealing;

Bigamy;

Maliciously wounding, or inflicting grievous bodily harm;

Assault occasioning actual bodily harm;

- Threats by letter or otherwise, with intent to extort money or other things of value; Chap. VII.
Sec. II.
- Perjury, and subornation of perjury; Variations in
treaty definitions
of crimes.
- Arson;
 “Crimes resulting from the act of wilfully setting fire to a house, or to buildings connected therewith, to the prejudice of another” [Brazil].
- Burglary, or house-breaking;
 “shop-breaking” added in United States treaty.
 “House-breaking, with intent to steal, or to commit other crimes” [Brazil].
- Robbery with violence, or with menaces;
 “including intimidation” [Belgium].
- Larceny;
 Embezzlement;
 sometimes “receiving any chattel, money, valuable security, or other property, knowing the same to have been embezzled or stolen” added [France];
- Obtaining money, valuable security, or goods by false pretences;
 Receiving money, valuable security, or other property knowing the same to have been stolen or unlawfully obtained;
 sometimes limited as to value of property [*e.g.* of greater value than £200, Uruguay].
- Counterfeiting or altering money, or bringing into circulation counterfeited or altered money;
- Knowingly making, without lawful authority, any instrument, tool, or engine adapted and intended for the counterfeiting of coin of the realm;
- Malicious acts done with intent to endanger the safety of any person travelling or being upon a railway;
 sometimes limited to “persons in a railway train” [Belgium].
- Malicious injury to property, if the offence be indictable;
- Assaulting a magistrate or police or public officer.
 This is a special clause found only in a few treaties, *e.g.* France, Guatemala, Luxemburg, and Spain.
- Forgery or uttering what is forged;
 “Counterfeiting or altering, or uttering what is counterfeited or altered” [Guatemala].
 The definition of forgery has given rise to difficulties which has necessitated a special reference in some treaties to the law of the foreign country. In the treaties with Austria, Brazil,

Chap. VII.
Sec. II.

Germany, Sweden and Norway, the following elaborate clause (subject to minor variations) has been introduced;—

Variations in
treaty definitions
of crimes.
Forgery.

Forgery or counterfeiting, or uttering what is forged or counterfeited; comprehending the crimes designated in the German *Penal Code* as counterfeiting or falsification of paper-money, bank notes, or other securities, forgery or falsification of other public or private documents, likewise the uttering or bringing into circulation, or wilfully using such counterfeited, forged, or falsified papers.

The same clause is introduced in the treaty with Switzerland; but instead of the reference to the law of one country, the sentence runs, “comprehending the crimes designated in the *Penal Codes* of both States. . . .”

Accessories.

Participation in the offences included in the list is usually dealt with in a special paragraph following the list, of which these two are typical. The condition that accessories should be punished by the laws of both States is invariable.

The extradition is also to take place for participation in any of the aforesaid crimes, provided such participation be punishable by the laws of both the Contracting Parties. [Germany].

The extradition is also to take place for participation in any of the aforesaid crimes, as an accessory before or after the fact, provided such participation be punishable by the laws of both the Contracting Parties. [Luxemburg].

In the treaty with Italy accessories after the fact are omitted; and in some treaties, such as those with Denmark and Ecuador, the subject is omitted altogether.

The following crimes require special consideration, and from their nature must be more fully treated.

Murder and Manslaughter.

Homicide.

Homicide is defined in many treaties, [*e.g.*, Austria, Brazil, Germany, Hayti] simply as—

Murder, or attempt to murder.
Manslaughter.

Conspiracy to murder is added in those with Denmark, Ecuador, Liberia, Monaco, Roumania, Russia, San Marino, and Servia.

Child-murder and poisoning are specially included in the treaty with Sweden and Norway; and infanticide in that with Switzerland.

In the case of the United States murder alone was included in the treaty of 1842, "manslaughter when voluntary" being added by the treaty of 1889.

Chap. VII.
Sec. II.

Variations in
treaty definitions
of crimes.

The most common form of the definition however is the following.

Murder (including assassination, parricide, infanticide, poisoning), or attempt or conspiracy to murder.

Homicide.

Manslaughter.

This occurs in the treaties with the Argentine, Bolivia, Chile, Colombia, Mexico, and Portugal. But "conspiracy to murder" is omitted in those with France, Guatemala, Luxemburg, Salvador, Spain, and Uruguay.

The parenthesis in this definition is rendered necessary by the fact that the four crimes referred to in it, although they come within the broad definition of "murder" in English law, are probably treated specially in the Penal Codes of these countries.

In the treaty with Belgium the same form occurs, with this addition—"in cases jointly provided for by the laws of the two countries." It is probable that this proviso relates only to conspiracy to murder. "Jointly provided" is probably a mistranslation of "*prevus simultanément*," and should be read "alike provided."

cf. Appdx. p. 40.

The inclusion of such crimes when committed against the Sovereign or his heir in the treaty with the Netherlands, has already been noticed.

cf. ante, p. 47.

In the treaty with Italy there is yet another form;

Murder, or attempt or conspiracy to murder, comprising the crimes designated by the Italian Penal Code as the association of criminals for the commission of such offences.

The Portuguese Government declines to deliver up any person either guilty or accused of any crime punishable with death. Both the Peruvian and Roumanian Governments also reserve to themselves an absolute discretion to refuse the surrender in such cases; in this case the provision is added to the item dealing with murder.

Refusal of
surrender in
capital cases.

Crimes against children and young girls.

Crimes against young children figure largely in the lists in the treaties, "child-stealing" being almost universal. In some there is a special item—"abandoning children, exposing or unlawfully detaining them" [Belgium, Guatemala, Liberia, Luxemburg, and others].

Chap. VII.
Sec. 11.

Variations in
treaty definitions
of crimes.

Offences against
children and
girls.

Carnal knowledge, and attempts to have carnal knowledge of young girls, are by no means universal. They are omitted from the treaties with the United States, Austria, Brazil, Denmark, Germany, Hayti, Italy, Sweden and Norway, and Switzerland. In the treaties in which it is included, the age limit of protection varies, the commonest limit being 16 years. The simple form—

Carnal knowledge, or any attempt to have carnal knowledge of a girl under 16 years of age, is to be found in the treaties with Liberia, the Netherlands Portugal, Russia, and Spain [Declaration of 1889]. It also occurs in the treaties with Roumania and Servia, but the age limit is 14 years.

The formula—

so far as such acts are punishable by the law of the State upon which the demand is made, is introduced in the treaties with Belgium, Monaco, and San Marino; and this formula—

if the evidence produced justifies committal for those crimes according to the laws of both the Contracting Parties in those with the Argentine, Colombia, and Mexico.

This formula is also in the treaty with Chile, where the age limit is 14 years.

The age limit in the treaty with France is 12 years, but the crime is included in indecent assault. This is also the limit in the case of attempts to have carnal knowledge in those treaties there the limit for the offence itself is 10 years, as in the treaties with Guatemala, Luxemburg, Salvador, and Uruguay, where the crime is thus defined and limited:—

Carnal knowledge of a girl under the age of 10 years;
carnal knowledge of a girl above the age of 10 years and under the age of 12 years;
any attempt to have carnal knowledge of a girl under 12 years of age.

Indecent assault is also a common, though not a universal item in the lists of crimes. In the treaties with Belgium, Monaco, and San Marino, it is thus defined:—

Indecent assault. Indecent assault without violence upon children of either sex under 13 years of age.

In the treaties with Guatemala, Luxemburg, Salvador and Uruguay, it is coupled with the formula as to carnal knowledge given above, the following being add—

Aggravated or indecent assault—indecent assault upon any female.

The effect of these variations in the age limit, and consequent differences from English law, will be considered presently.

Chap. VII.
Sec. II.

Fraud and Bankruptcy.

Variations in
treaty definitions
of crimes.

Fraud *per se* is not included in any of the lists of crimes; the common form to be found in nearly all the treaties is—

Fraud.

Fraud by a bailee, banker, agent, factor, trustee, or director or member or public officer of any company.

But this simple form is only to be found in the treaties with Monaco and San Marino; the following paragraph being almost invariably added—

made criminal by any law for the time being in force.

The meaning of this provision will be considered in due course.

In the treaty with the United States, the fraud must be “made criminal by the laws of both countries.”

In the treaty with the Argentine, and some others, the offence must be “punishable with imprisonment for not less than one year by any law for the time being in force.” In the treaty with Brazil the term “malversation” is added.

The common form is stated more elaborately in the treaty with Italy:—

Fraud, abstraction, or unlawful appropriation by a bailee, banker, agent, factor, trustee, director, or member, or officer of any public or private company or house of commerce.

With regard to bankruptcy, the common form is—

Bankruptcy.

Crimes against bankruptcy law.

But in some treaties it is in the more limited form—

Crimes by bankrupts against bankruptcy law;

In the treaty with the United States the crime is omitted to altogether. In the treaty with Brazil this form is used—

cf. R. v. Wilson.
3 Q.B.D. 42.
cf. ante, p. 36.

Bankruptcies subject to criminal prosecution, according to the laws applicable thereto.

In the treaty with Italy it is simply described as—

Fraudulent bankruptcy.

In the treaty with Austria Hungary, the crime is specially treated:—

Crimes against bankruptcy law: comprehending the crimes considered as frauds committed by the bankrupt in connexion with the bankruptcy, according with [to] the Austrian Penal Laws if the extradition shall take place from Austria, and with [to] the Hungarian Penal Laws if the extradition shall take place from Hungary.

Chap. VII.
Sec. II.

Variations in
treaty definitions
of crimes.

It is also specially treated in the treaty with Germany.

Crimes by bankrupts against bankruptcy law; comprehending the crimes designated in the German Penal Code as bankruptcy liable to prosecution.

The effect and meaning of these special references to the law of one of contracting State will be considered in due course.

Piracy, and High Sea offences.

High sea
offences.

In the treaty with the Argentine and a few others the following form is adopted for these offences:—

Piracy and other crimes or offences committed at sea against persons or things which, according to the laws of the High Contracting Parties [*i.e.*, of both], are extradition offences,

with this limitation, that they are punishable by more than one year's imprisonment.

The form more commonly used is much fuller:—

- (i) Piracy by the law of nations.
- (ii) Sinking or destroying a vessel at sea, or attempting or conspiring to do so.
- (iii) Revolt, or conspiracy to revolt, by two or more persons on board a ship on the high seas against the authority of the master.
- (iv) Assault on board a ship on the high seas with intent to destroy life, or to do grievous bodily harm.

Conspiracy is sometimes omitted [Norway]; and sometimes the intent to destroy life in (iv) [United States].

In some treaties piracy is omitted, the other crimes being alone included [Germany]. In Luxemburg and Switzerland the subject is omitted altogether.

In the treaty with France the clause is thus drafted:—

- (a) Any act of depredation or violence by the crew of a British or French vessel, against another British or French vessel, or by the crew of a foreign vessel not provided with a regular commission, against British or French vessels, their crews or their cargoes.
- (b) The fact by any person being or not one of the crew of a vessel of giving her over to pirates.
- (c) The fact by any person being or not one of the crew of a vessel of taking possession of such vessel by fraud or violence.

Paragraphs (d) and (e) are the same as (ii) and (iii) in the form given above.

In the treaty with Italy piracy is treated very elaborately:—

Chap. VII.
Sec. II.

Piracy, according to international law, when the pirate, a subject of neither of the High Contracting Parties, has committed depredations on the coasts, or on the high seas, to the injury of citizens of the requiring Party, or when, being a citizen of the requiring Party, and having committed acts of piracy, to the injury of a third State, he may be within the territory of the other Party, without being subjected to trial.

Variations in
treaty definitions
of crimes.

Then follow the three other offences given in the common form.

Slave trade offences.

In the treaties with Roumania and Servia the crime is defined simply as “dealing in slaves.” The more common form, however, is—

Slave trade
offences.

Dealing in slaves in such manner as to constitute a criminal offence against the laws of both States.

Another form is sometimes found, as in the treaty with the United States:—

Crimes and offences against the laws of both countries for the suppression of slavery and slave trading.

The subject is omitted altogether in the treaties with Austria, Brazil, Denmark, Ecuador, Germany, Hayti, Italy, Sweden and Norway, and Switzerland.

SECTION III.

Principles governing the Criminal Law of Extradition.

The brief analysis of the lists of crimes in the preceding Section, raises questions of considerable importance, owing to the limitations which are introduced in the case of certain crimes. These limitations, depending as they do entirely on the treaties, are intimately related to what I have called the principles of the law of extradition which lie beyond the Act. They not, it is true, common to all treaties; but they more or less permeate them, and they are principles with which the Courts must concern themselves in enforcing the law in any given case. The first is perhaps the most important; it deals with the degree of criminality of an act in respect of which extradition will be granted.

Limitations
introduced into
definitions of
crimes.

Chap. VII.
Sec. III.

The turpitude of the offence.—A.—General limitations.

General idea, to
exclude minor
offences.

The Act, as we have seen, is based on the idea that not every criminal should be surrendered, but those only whose offences are sufficiently serious to warrant the trouble and expense. Following out this idea only grave crimes were specified in the schedule of 1870. But in the schedule of 1873, the introduction bodily of the Acts of 1861 necessitated some limitation in order to exclude what the law deems to be minor offences. The turpitude of the offence *per se* was considered, and not that of the actual offence which had been committed; offences which are not indictable were excluded, so far as the Act of 1861 were concerned. So much for the Act. We now turn to the treaties.

Use of "crime"
and "offence" in
treaties.

In the first place the word "crime," which is frequently used in them, does not indicate any exceptional degree of criminality; it is synonymous with "offence," which is as frequently used. Neither term has any technical meaning in English law, each signifying generically a disobedience to the public law involving punishment. In this, as in so many points, the English law differs from continental law. In the scientific Codes of many foreign countries breaches of the criminal law are sub-divided into well-defined heads—"crimes," "délits" and "contraventions." Parenthetically it may be remarked, that in view of this fact it is somewhat strange to find the words "*crime ou délit*" in article II of the French treaty translated "crime or offence."

Limitation to
indictable
offences not
referred to in
treaties.

The next point which strikes one as remarkable is the omission in the English text of the treaty lists of crimes any general reference to the statutory limitation as to indictable offences; though in the solitary instance of malicious injury to property it is invariably coupled with the restriction, "if such offence be indictable." The foreign texts have no similar restriction, nor, as a general rule, have they any reference to the sub-divisions above referred to. Moreover in the articles themselves, the technical words seem to be used somewhat promiscuously; thus in article I of the French treaty, the agreement to surrender, "*crime*" is alone used; but in article II, as pointed out above, "*crime*" and "*délit*" are used in juxtaposition. We seem, therefore, to get to this position, that whatever view the foreign law may take of the gravity of the offence, unless the facts shew an indictable offence by English law extradition must be refused by this country; and on the other hand, the surrender will not be asked for by this country unless this condition is fulfilled.

cf. p. 113.

NOTE on the SUB-DIVISION OF OFFENCES BY FRENCH LAW.

Chap. VII.
Sec. III.

As it is most important to appreciate how foreign law differs from our own in this matter of sub-division of offences, I append the most important provisions of the French *Code Pénal* on the subject.

Art. I. L'infraction que les lois punissent des peines de police est une *contravention*.

L'infraction que les lois punissent de peines correctionnelles est un *délit*.

L'infraction que les lois punissent d'une peine afflictive ou infamante est un *crime*.

Art. 6. Les peines en matière criminelle sont ou afflictives et infamantes, ou seulement infamantes.

Art. 7. Les peines afflictives et infamantes sont ;

- (i) la mort ;
- (ii) les travaux forcés à perpétuité ;
- (iii) la déportation ;
- (iv) les travaux forcés à temps ;
- (v) la détention ;
- (vi) la réclusion ;

Art. 8. Les peines infamantes sont ;

- (i) le bannissement ;
- (ii) la dégradation civique.

Art. 9. Les peines en matière correctionnelle sont ;

- (i) l'emprisonnement à temps dans un lieu de correction ;
- (ii) l'interdiction à temps de certains droits civiques, civils ou de famille ;
- (iii) l'amende.

Art. 20. Quiconque aura été condamné à la détention sera renfermé dans l'une des forteresses situées sur le territoire continental de la République. . . .

Art. 21. Tout individu de l'un ou de l'autre sexe, condamné à la peine de la réclusion sera renfermé dans une maison de force, et employé à des travaux dont le produit pourra être en partie appliqué à son profit, ainsi qu'il sera réglé par le Gouvernement.

La durée de cette peine sera au moins de cinq années, et de dix ans au plus.

Art. 40. Quiconque aura été condamné à la peine d'emprisonnement [peine en matière correctionnelle] sera renfermé dans une maison de correction ; il y sera employé à l'un des travaux établis dans cette maison, selon son choix.

La durée de cette peine sera au moins de six jours, et de cinq années au plus ; sauf les cas de récidive ou autres où la loi aura déterminé d'autres limites. . . .

Art. 41. Les produits du travail de chaque détenu pour délit correctionnel seront appliqués partie aux dépenses communes de la maison, partie à lui procurer quelques adoucissements, s'il les mérite, partie à former pour lui, au temps de sa sortie, un fonds de réserve ;

Chap. VII.
Sec. III. le tout ainsi qu'il sera ordonné par des règlements d'administration publique.

Note *continued*, on sub-division of offences by French law.

Art. 464. Les peines de police sont ;
l'emprisonnement,
l'amende,
et la confiscation de certains objets saisis.

Art. 465.—L'emprisonnement, pour contravention de police, ne pourra être moindre d'un jour, ni excéder cinq jours, selon les classes, distinctions, et cas ci'après spécifiés.

Provision in Austrian treaty corresponding to English principle.—

There is however one exception to what is stated above as to this question being ignored in the treaties. In the treaty with Austria Hungary the following paragraph follows the list of crimes;—

In all these cases the extradition will only take place from the Austro-Hungarian States when the crimes, if committed in Austria, would, according to Austrian law, constitute a "*Verbrechen*," or, if committed in Hungary, would, according to the laws and customs being in force in Hungary, constitute a crime ("*buntett*"); the extradition from Great Britain only when the crimes, if committed in England, or within English jurisdiction, would constitute an extradition crime, as described in the Extradition Acts of 1870 and 1873.

The meaning of "*Verbrechen*" is "crime," which is used in the German Penal Code in the same sense as in the French, to distinguish it from "*Vergehen*," the equivalent of *délit*, and "*Übertretung*," the equivalent of *contravention*. "*Buntett*" is the Magyar equivalent of "*Verbrechen*," and is used with the same intent. The first part of the article, therefore, which refers to Austria and Hungary, has regard to the nature of the offence, and seems intended to carry out, in its own way, the idea of the English Act, that the surrender is to be restricted to a certain class of offences.

A reference to the Note on the sub-division of offences by French law shews that it is impossible to find an exact equivalent in the continental systems to our "indictable offence." On the other hand, there is too much reason to fear that foreign lawyers are apt to consider their distinction between "*crime*" and "*délit*" to be equivalent to the "mediaeval anachronism" which distinguishes felony from misdemeanor. But we may apply the principle of the "convenient equivalents" to this question also, for it affects each item of the treaty list of crimes. Identity of

principle is all that is required; and so long as the main idea is preserved that extradition is only to extend to serious offences, it is theoretically sufficient. But a "*Vergehen*" may well be an indictable offence; and therefore in practice, this provision in the Austrian treaty seriously limits surrender between the two countries; for applying the rule which has been established, we get to this position—that extradition is limited to offences which fall only within the more limited term; for Austria will only surrender for a "*Verbrechen*," and England will limit surrenders to Austria in the same way. It is probably owing to this difficulty that this clause has not been introduced into other treaties. It is difficult for an English lawyer to speak with certainty on so very complex a subject; but I believe that it would be safe to treat *crimes* and *délits* as broadly equivalent to "indictable offences" for the purposes of extradition.

Chap. VII.
Sec. III.

cf. pp. 113, 216.

The second part of the article set out above is at first sight difficult to understand, and to have little relation to the first part; for to say with regard to extradition from Great Britain, that it can only take place "when the crime, if committed in England, would constitute an extradition crime," would seem to be mere surplusage. It does, however, lay down a principle corresponding with the first part; for when reference has to be made to the schedule of 1873, the offence must be indictable. The short reference to the Acts of 1870 and 1873, was probably adopted in order to avoid the complicated statement that the offence, under the schedule of 1870 need not be, but under the schedule of 1873 must be, indictable.

cf. p. 131.

The turpitude of the offence.—B.—Special limitations.

We now come to the special limitations of the same character in the items of the lists of crimes.

The first, which has been mentioned above, introduces this same question of indictable offences. In nearly all the treaties "malicious injury to property" is included in the list of offences, but always with this limitation in the English text—"if the offence is indictable." The meaning of this is clear; the group of offences is a large one, but only those are included which are triable on indictment. The reason for introducing it is, however, not too clear; but the explanation follows from what has been said above as to difference between the two schedules. If an offence does not fall within the Malicious Injuries to Property Act, 1861, as, for example, if some new statute were passed, and recourse

Malicious
injuries to
property as dealt
with in the
treaties.

cf. p. 131.

24 & 25 Vict.
c. 96.

Chap. VII.
Sec. III.

Malicious
injuries to
property as
dealt with in
the treaties.

must be had to the schedule of 1870, then the same principle that the offence must be indictable is to be applied.

But when we turn to the corresponding item in the foreign language, the difficulty is aggravated. In the German text of the Austrian treaty, the proviso is—"so long as the offence is not punishable as a contravention", which, while it carries out the idea suggested above, does not fit in with the paragraph we have just considered. The item is omitted altogether from the German treaty.

In the French text of the item in the French treaty—

Destruction ou dégradation de toute propriété mobilière ou immobilière, punies des peines criminelles ou correctionnelles—

the two texts are at cross purposes, for there is an express inclusion of contraventions, which are practically all non-indictable offences. There can be little doubt that we have in this case a provision in one of the texts which goes beyond the Act.

The item as it appears in the French text of the Belgian treaty must be noted, for it endeavours to reduce the offence to concrete cases of malicious injury. The English text is, as usual—"Malicious injury to property, if the offence be indictable."

Destruction ou dégradation de constructions, machines, plantations, récoltes, instruments d'agriculture, appareils télégraphiques, ouvrages d'art, navires, tombeaux; dommages causés volontairement au bétail et à la propriété mobilière, délits qui sont réprimés en Angleterre sous le nom de '*malicious injury to property.*'

Here the reference in the English text to the offence being indictable is still necessary, for it qualifies the general reference to the English law in the foreign text.

Meaning of
"made criminal
by any law for
the time being
in force."

There is another phrase sometimes to be found in some items in the English text, the object of which is difficult to determine, but which may be conveniently considered here. It is sometimes translated in the foreign text, and sometimes not: it runs thus—"made criminal by any Act (or, any law) for the time being in force." It occurs in connexion with fraud by a bailee in the French treaty, and in many others. In *re Arton (No. 2)*, Lord Russell, C.J., referred to this provision, and seems to have assumed that in virtue of it the Larceny Act, 1875,* was specially incorporated into the English text of the treaty. So far as the English text is governed by the English Act, the sentence is

re Arton (No. 2),
1896, 1 Q.B. 509.

cf. ante, p. 122.

* *cf. ante*, p. 136.

unnecessary, because all amending Acts are incorporated in the schedule of 1873. If, however, this special reference is necessary, a question of great importance arises—Is the English treaty list to be interpreted by the law as it stood at the time the treaty was entered into? or, putting this in another way—Is it true to say that the English treaty list is controlled by this provision of the schedule? The corresponding question with regard to the foreign list of crimes, is not so important because amendment of the continental Penal Codes is far less common than of the English criminal law.

Chap. VII.
Sec. III.

I think the English treaty list must be controlled by the schedules in all particulars; for the conditions under which such treaties are negotiated cannot be overlooked. We know that the laws of the two countries are carefully examined during the negotiations, a fact specially alluded to by Cockburn, C.J., in *re Windsor*; and this includes not merely the criminal law but also the whole law of extradition. But quite apart from this, it is too dangerous a principle to advance that the treaties refer only to the law at the time, for then every change in the law would involve the negotiation of new treaties. Moreover the treaties deal with the future, and the intention of the agreement to extradite may legitimately be said to look to future law. These considerations seem to shew that the sentence alluded to above is superfluous.

re Windsor.
6 B. & S. 522.

Treaties
contemplate
amendments
of the law.

The turpitude of the offence.—C.—*References to maximum and minimum penalties.*

We come next to a clause in the Argentine treaty, which also has a reference to the turpitude of the offence, but which, however is not common. Extradition shall not take place—

when, according to the laws of either country, the maximum punishment for the offence is imprisonment for less than one year.

The meaning of this is clear. It relates to the class of offence with which the fugitive is charged, and it allows extradition only in cases where the offence is punishable by the law of either country by imprisonment for one year or more. In view of the special limitations in the case of certain offences to be considered presently, it is important to state the effect of the clause in this way—It deals with maximum and not with minimum penalties; and therefore, where the maximum penalty for an offence is imprisonment for one year, or for more than one year, the fact

Offences
punishable by
maximum of
one year.

Chap. VII.
Sec. III.

Actual sentence
disregarded.

that the punishment actually awarded in any given case is less than one year will not prevent the fugitive from being surrendered. The clause regards the turpitude of the class to which the offence belongs, and not the gravity of the specific offence in question.

The position in which the provision is placed in the treaties in which it figures is inappropriate. Instead of being in close proximity to the list of crimes, with which it has an intimate relation, it figures in the Argentine treaty as a second paragraph to article V, which deals with the effect of limitation of punishment. But it is a provision of considerable importance, because it carries out in some measure the recommendation of the Commissioners that minor offences should not be made the subject of requisitions for surrender, and is to be found in such a comparatively recent treaty as that with Chile, concluded in 1897.

There are two other special limitations which refer to the minimum penalty for the Offence. The following remarks must be read in connexion with the Note on the English law of minimum penalties.

Offences
punishable by
minimum of
one year.

In the case of frauds by bailees and others, in some treaties, such as that with the Argentine, (item 16), the fraud in question must be "punishable with imprisonment for not less than one year." Fraud, like malicious injury to property, is a generic name comprising a large number of different offences; the meaning of this provision is that the fraud with which the fugitive is charged must belong to that category of fraud to which the law has attached a minimum penalty of at least one year. An offence for which the penalty is imprisonment for not less than two years, comes within these words.

Offences
punishable by
more than one
year.

But a different form of words is used in the same treaty, in the case of piracy and other crimes which are in the nature of piracy, (item 22); these "other crimes" are not extraditable unless they are "punishable by more than one year's imprisonment." This seems to exclude offences to which a minimum penalty of one year is attached. But the point is not very clear; for an offence which is punishable by a maximum of say 7 years and a minimum of 1 year, may be called an offence punishable, that is, which may be punished, by imprisonment for more than one year. I imagine the former interpretation to be correct; because the tendency of the treaties in which these limitations are introduced, is to deal with the class rather than with the actual offence, with the legal limits of punishment rather than with the actual amount awarded in any special case.

NOTE on the ENGLISH LAW AS TO MINIMUM PENALTIES.

Chap. VII.
Sec. III.

It will be useful, more especially for foreign readers, to trace the alterations in the English law as to minimum penalties, for little information is to be derived from the texts of our criminal law as printed. To take an example which contains the punishment provisions in their common form, s. 49 of the Malicious Injury to Property Act, 1861. In the "Statutes at Large," it runs as follows;—

Whosoever shall unlawfully and maliciously destroy any part ^{24 & 25 Vict.} of any ship or vessel in distress, &c., shall be guilty of felony, ^{c. 69, s. 49.} and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for any term not exceeding 14 and not less than 3 years, or to be imprisoned for any term not exceeding 2 years, with or without solitary confinement.

In the "Statutes Revised," it stands thus;—

Whosoever shall unlawfully, &c., shall be guilty of felony, and being convicted thereof, shall be liable . . . to be kept in penal servitude for any term not exceeding 14 . . . years.

The minimum penalty has disappeared, also the alternative imprisonment with its minimum penalty. The process by which this has been arrived at is as follows. Starting with the first alteration of our law of punishment, as older statutes may occasionally have to be referred to, this form of punishment—

shall be liable to be transported beyond the seas for life or for any term not less than 7 years,

became, in virtue of 20 & 21 Vict. c. 3, ss. 2 and 6—

shall be liable to penal servitude for life or for any term not less than 3 years.

Then came the Penal Servitude Act, 1891, which provided that ^{54 & 55 Vict.} where under any enactment in force when it came into operation, ^{c. 69.} the Court had power to award a sentence of penal servitude, the sentence might be "for any period not less than 3 years, and not exceeding either 5 years, or any greater period authorised by the enactment." Further, where under any Act in force, or any future Act, (unless otherwise provided in it), the Court had power to award a sentence of penal servitude, the sentence might be "imprisonment for any term not exceeding 2 years, with or without hard labour."

The effect of the former Act was to substitute a statutory minimum sentence of 3 years penal servitude for the minimum sentences in different statutes; and the effect of the Act of 1891 is to allow sentences of imprisonment not exceeding 2 years with or without hard labour, to be awarded in lieu of penal servitude when provided in any statute.

The joint effect of these two statutes is to render unnecessary the statement of the alternative to penal servitude, imprisonment not exceeding any given term; and where the period in any existing statute exceeds 2 years, it is overridden.

Chap. VII.
Sec. III.

These statutes have been given effect to by the Statute Law Revision Acts, chiefly by the Act (No. 2) of 1893, which, by further elimination of useless words, has reduced the section quoted above as originally drawn to the form given in the "Statutes Revised."

References to the law of one State.

There frequently occur in the lists of crimes references to the law of one of the Contracting Parties in connexion with some particular crime. They may be divided into the following classes.

A.—*References to the law of the foreign country in the foreign text.*

References in
foreign text to
special foreign
law.

References in the foreign text only to a special law, as distinguished from the general designation of the crime, are found occasionally, as in the following, which occurs in the treaty with the Netherlands—

23. Threats by letter or otherwise, with intent to extort.

23. Bedreiging bij geschrifte onder eene bepaalde voorwaardē (Artikel 285 tweede lid Nederlandsch Wetboek van Strafrecht).

The effect of this does not seem to admit of doubt. The reference by the foreign State to its own Code may be for the sake of emphasis or greater safety, in order that the whole law in relation to the crime may be brought under notice. This plan might well be adopted where some article of the Code had been amended by a special law. Or, if the English law were the wider of the two, the special law quoted might possibly fill the gap, and bring the equivalents more nearly into line with one another. But whatever may be the reason for the reference, no legal consequences follow, as it does not interfere with the principle on which surrenders from this country are governed, that the case must fall within the English text as well as the foreign text. If the latter reason suggested be the right one, it ensures the surrender to this country of persons who fall within the wider provisions of the English law.

cf. p. 113.

B.—*References to the law of England in the foreign text.*

Instances of this class are by no means uncommon. Thus in the treaty with Germany we find this clause—

12. Burglary or house-breaking.

12. Einbrechen und Eindringen in ein Wohnhaus oder dazu gehöriges Nebengebäude mit der Absicht, ein Verbrechen zu begehen, zur Tages— (*house-breaking*) oder Nachtzeit (*burglary*).

Chap. VII.
Sec. III.

References in foreign text to English law.

The object of references such as these is to bring the foreign law into line with the English definition, not from the point of view of the law of the foreign State, but for the purposes of extradition. Technical terms of the English criminal law are introduced for the purpose of completing, not the statement of the foreign law, but of the English law introduced into the foreign text. The result of this must be to prevent any case which comes within the technical English definition being excluded, if by chance it did not fall within the definition of the crime in the foreign Code. Thus in item 18 of the same treaty, the equivalent of the English "revolt" of persons on board ship, is given as "Widerstand mit Thätlichkeiten (*revolt*)."

The most interesting of this class of reference is item 27 of the Belgian treaty, already referred to, but which is sufficiently important to set out again.

27. Malicious injury to property, if the offence be indictable.

27. Destruction ou dégradation de constructions, machines, plantations, récoltes, instruments d'agriculture, appareils télégraphiques, ouvrages d'art, navires, tombeaux; dommages causés volontairement au bétail et à la propriété mobilière, délits qui sont réprimés en Angleterre sous le nom de "*malicious injury to property*."

The French text, owing to the use of the semi-colon, is open to several constructions; but I think the true reading must be that the sentence which begins "*délits qui sont réprimés*" refers to the whole clause. The meaning of it, if this is correct, is that the special cases of malicious damage referred to are those which are specially dealt with in the Belgian Code; they are introduced in case they deal with a crime not specified in the English Act, but falling under the general section, s. 61, "other

Chap. VII.
Sec. III.

24 & 25 Vict.
c. 97.

cf. p. 199.

offences against property." This is followed by a brief summary of the Act with regard to cattle and moveable property, with a general reference to the English offence "Malicious Injury to Property," that is to say, to the Act of 1861. From the point of view of extradition, this is admirable; and it is apparently drafted so as to ensure complete correspondence between the two texts. So far as England is concerned, it would appear to guarantee the surrender of all offenders against this branch of our law; but how far the foreign State is empowered to make such a stipulation as to cases which fall outside of its own Code, raises the constitutional question with which we are familiar.

C.—References to the foreign law in the English text.

References in
English text to
foreign law.

We now come to the converse case, references in the English text to the law of the foreign State. These may be divided into two classes. First, those which appear to be mere translations of some reference in the foreign text to its own law, of which the following are examples—

Brazil.

Translations.

4. Forgery, or imitation, counterfeiting or falsification, of any document or paper, comprising the crimes designated in the Criminal Code of Brazil as imitation, counterfeiting, or falsification of paper money, notes of banks, or other securities public or private, as well as the bringing into circulation of any papers imitated, counterfeited, or falsified.

4. O crime de falsidade, ou imitação, contrafacção, ou falsificação de qualquer documento ou papel, comprehendendo os crimes designados na lei criminal do Brazil, de imitação, contrafacção, ou falsificação do papel moeda, notas dos bancos, ou outros titulos publicos ou particulares; assim como o uso premeditado ou introduccção na circulaçção de quaesquer papies imitados contrafeitos ou falsificados.

Italy.

1. Murder, or attempt or conspiracy to murder, comprising the crimes designated by the Italian Penal Code as the association of criminals for

1. Assassinio, o tentativo o cospirazione per assassinare, comprendente i reati designati da Codice Penale Italiano siccome associazione de malfattori

the commission of such offences.

2. Manslaughter, comprising the crimes designated by the Italian Penal Code as wounds and blows wilfully inflicted which cause death.

per la perpetrazione di tali reati.

2. Omicidio volontario, comprendente i reati indicati da Codice Penale Italiano colla designazione di percosse e ferite volontarie che producano la morte.

Chap. VII.
Sec. III.

Secondly, there are references to the foreign law which are not translations, but are introduced as part of the English definition. The following example occurs in the German treaty.

4. Forgery or counterfeiting, or altering or uttering what is forged or counterfeited or altered; comprehending the crimes designated in the German Penal Code as counterfeiting or falsification of paper-money, bank-notes, or other securities, forgery or falsification of other public documents, likewise the uttering or bringing into circulation, or wilfully using such counterfeited, forged, or falsified papers.

4. Nachmachen oder Verfälschen von Papiergeld, Banknoten, oder anderen Werthpapieren, Fälschung oder Verfälschung andere öffentlicher oder Privat-Urkunden, imgleichen Verausgabung oder In-Verkehr-Bringen oder wissentliches Gebrauchen solcher nachgemachten oder gefälschten Papiere.

Incorporation of
foreign law.

The manifest difference in the form of these articles justifies, I think, the statement made above, that in the first class the reference in the English text to the foreign law only is a translation of the reference to its own law in the foreign text. For, *cf.* p. 113. bearing in mind the twofold object of the bilingual lists, that each text indicates the crimes for which each country will demand and each will grant, the surrender, it is impossible that England should demand the surrender of persons who have committed an offence which is referable to a foreign law alone. Therefore I take the meaning of this class of provision to be, that the translated reference to the foreign law in the foreign text is an indication that England recognises that foreign law, and, subject always to fundamental principles, will grant the surrender accordingly.

But in the second class, the meaning of the reference is not very clear. It may be intended to be no more than a commendious paraphrase of the foreign text, having the same object

Chap. VII.
Sec. III.

and effect as the last class; or it may be the converse of class B above, that is, an undertaking to surrender fugitives for those crimes by German law, although they are not crimes by English law. If this is the meaning, as I suspect it is, then the troublesome question arises whether it is possible to give effect to such an undertaking. In view of the decisions it would seem to be impossible. And reverting now to class B, the same answer must be given if the foreign country is governed by constitutional principles identical with our own. The principle is of modern growth, and it is quite possible that these articles were drafted without full recognition of its effect.

References to the laws of both States.

Acts defined to
be criminal by
the laws of both
States.

The next point to be considered is a statement often found in connexion with certain crimes in the lists, that they must be crimes by the laws of both States. This is universal in the case of offences against the slave-trade, and of participation in the crimes contained in the lists. In the case of offences analogous to piracy, the condition is usually that they should be "extradition offences" by the laws of both States. Except for the implied reference to indictable offences by English law, referred to above, this seems to be superfluous, and a mere statement of an admitted fact. Further, it assumes that there is in all countries something equivalent to what we call statutory extradition crimes.

cf. p. 219.

cf. p. 113.

cf. p. 126.

But with regard to the general statement that the act must be criminal by the laws of both States, it would seem to be no more than a special reference to the cardinal principle applicable to all cases that the fugitive's act must fall within both texts of the treaty lists, that is, must be an offence against the laws of both States. But this rule has been elaborated by the English Courts, and we are somewhat in the dark as to whether all foreign Courts act upon it; it may therefore have been considered that the cases in which it is inserted are of sufficient importance to warrant a special reference to it. There is one other possibility. It has been suggested that the requisition must be taken as an authoritative construction of the foreign law applicable to the case; it might perhaps be said that where in both texts of the treaty, there is an express reference to the laws of both States, it allows, or possibly requires, the Courts of the extraditing country to satisfy itself on this point. I put this suggestion forward, however, with considerable reserve.

It will be convenient here to examine two practical illustrations of the way in which the rule works that the act must be criminal by the laws of both States; or, putting it into the language of the Act, that the crime committed abroad must be one which, if committed in England, would be one of the English crimes described in the schedule. The first is murder, and the point arises in consequence of the divergence between the English and the continental law on the subject.

Chap. VII.
Sec. III.

of. p. 109.

A has killed *B* in France. The Crown on the enquiry before the magistrate produces no evidence of malice aforethought, and the prisoner produces no evidence which would either reduce the killing to manslaughter, or entitle him to be discharged, that is to say, to be acquitted were he to be tried in England. The presumption is against the prisoner; had the crime been committed in England the Crown at the trial would be entitled to ask for a verdict of murder, and the jury would be entitled to give it. Therefore, so far as the law of England is concerned, the case for extradition is complete. But in French law, murder could not be found, for the burden is on the prosecution to prove premeditation; in other words, homicide is raised to murder by evidence of premeditation, and therefore, so far as the law of France is concerned, there is no case.

Murder abroad.

The difficulty arises from the fact that the magistrate cannot enquire into the foreign law, much less put in force the foreign procedure. I am not sure what the solution is, and the point does not seem to have been considered. As the law stands the fugitive would probably be surrendered; yet the case does not fall within the spirit of the law of extradition. Moreover, it cannot be said that the fugitive will probably escape when he is tried in France, for the "*instruction*" will as likely as not furnish the required evidence.

Carnal knowledge is the second illustration; but the treaty here comes into the question, because the offence is sometimes made subject to the same condition; as in the Belgian treaty. It is put in the form of a reference to the law of the State applied to, which is of course the same thing, because it must first be an offence by the law of the State applying for the surrender.

Carnal knowledge.

14. Rape.

Carnal knowledge, or any attempt to have carnal knowledge of a girl under

14. Viol.

Commerce sexuel, ou tentative de commerce sexuel, avec une fille âgée de moins

Chap. VII.
Sec. III.

16 years of age, so far as such acts are punishable by the law of the State upon which the demand is made.

de 16 ans, en tant que ces actes sont punissables par la loi de l'État auquel la demande est adressée.

cf. p. 212.

The variations of the age limit in regard to this offence in the different treaties have already been noticed. It will be convenient first to state briefly the English law on the subject.

48 & 49 Vict.
c. 69.

cf. p. 143.

By s. 4 of the Criminal Law Amendment Act, 1885, "any person who unlawfully and carnally knows any girl under the age of 13 years, shall be guilty of felony"; and the attempt is made a misdemeanor.

By s. 5 of the same Act, "any person who unlawfully and carnally knows or attempts to have carnal knowledge of any girl being of or above the age of 13 years and under the age of 16 years, shall be guilty of a misdemeanor." It is a defence to the charge if it appears that the person charged had reasonable cause to believe that the girl was of or above the age of 16.

Effect of variations in age limit in cases of carnal knowledge.

The effect of the variations in the age limit of protection between any foreign law and our own, coupled with the fact that the case must fall within the laws of both States, works out in the following way; if the offence is committed on a girl in England between the ages of 12 and 13, the prisoner would not be surrendered from France, where the age limit is 12. But he would be surrendered from Portugal, where the limit is 16. Conversely, in the case of an offender in Portugal, if the girl were between the ages of 13 and 16, the fugitive would be surrendered by England, but then it would be subject to the special defence indicated above; for if this fact were proved to the satisfaction of the magistrate hearing the case for extradition, there would be no offence by English law, and therefore there could be no surrender.

Effect of English rule of defence.

This brings us to the provision of the Argentine treaty that the *evidence produced* must justify the committal by the laws of both States. The two texts correspond, the English being as follows;—

Carnal knowledge or any attempt to have carnal knowledge of a girl under 16 years of age, if the evidence produced justifies committal for those crimes according to the laws of both the Contracting Parties.

This provision raises an entirely different question from that involved in the difference between the age limits. There may be important differences between the laws of evidence of the two

countries in regard to this particular crime, more especially on two points—the evidence of the girl, and the evidence of the prisoner. So long as the admission of the evidence of either is discretionary no difficulty should arise, because, at least with us, the committal itself is a question of judicial discretion. Suppose, for example, the girl's evidence were admissible in one country and inadmissible in the other, it could not be said that the reception of her evidence in the former country would be a legitimate ground for refusing to extradite a fugitive from the latter; for the treaty does not say the evidence must be the same in both countries, only that the evidence actually given must justify committal in both. But if corroboration of the girl's evidence were necessary in one country but not in the other, then the former country might justly refuse extradition of the fugitive if the girl's evidence had not in fact been corroborated in the requesting country. If we invert the case, and imagine the girl's evidence inadmissible in the requested country, then extradition for this offence, when the law has attached to it this condition, could never take place.

Chap. VII.
Sec. III.

Provision that
evidence must
justify committal
in both States.

SECTION IV.

Extradition Crimes by Statute and Treaty combined.

We now come to the last and most important stage of the enquiry. The bearing of the statutory list of crimes has been ascertained—the surrender from England of a fugitive can only take place if the crime charged falls within it. The meaning and effect of the bilingual lists of crimes in the treaties has also been ascertained—the crime with which the fugitive is charged must fall within both lists. The combined effect of these rules is this—in the case of a surrender by a foreign country to England, the crime must fall within both lists of the treaty in question; but in the case of a surrender to a foreign country by England, the crime must fall within the schedules of the Acts, and also within both treaty lists.

cf. p. 130.

cf. p. 113.

Statute and
treaty combined.

This somewhat complicated point is rendered still more complicated by the great particularity with which the Acts of 1861 deal with the criminal law. Even in the simpler case of a surrender to England from a foreign country, the offence may be one for which it would be impossible to find the precise equivalent in the foreign treaty—for example, destroying hopbinds,

cf. p. 206.

Surrender to
England.

Chap. VII.
Sec. 1 V.

24 & 25 Vict.
c. 97.

24 & 25 Vict.
c. 98.

24 & 25 Vict.
c. 96.

cf. Chap. III,
Sec. VIII.

(s. 19 of the Malicious Damage Act, 1861); or forging the name of the Accountant General (s. 33 of the Forgery Act, 1861); or embezzlement by a clerk of the Bank of England (s. 73 of the Larceny Act, 1861). Each one of them is only a particular instance (taking the treaty with France as the concrete case) of "malicious injury to property, if the offence is indictable" (item 23): of "forgery" (item 2): and of "embezzlement" (item 20), respectively. It is more than probable that, owing to the broad method on which foreign Criminal Codes are drawn, each of these offences will fall within the corresponding broad heads of the French Code.

Surrender from
England.

But the converse case, where the surrender from England is asked by France, is far from simple. Suppose the offence in France to be destroying *sarments de vignes*, or forging the name of the *Chef du Service de la Comptabilité*, or *détournement* by a clerk of the *Banque de France*, we get to this position—the offence falls under the general item of the French text of the treaty, and also under the corresponding general item of the English text; but (assuming the case not to come within the schedule of 1870, so that the schedule of 1873 must be referred to) there is no section of the English Acts of 1861 under which any of these offences would fall, and therefore it would appear as if extradition would have to be refused.

Effect of the
Act on the treaty
lists.

24 & 25 Vict.
c. 98.

I take one more instance in order that the difficulty may be better appreciated. Suppose the offence in France were, destruction, injuring, forging, or falsifying an "act of the civil status." In the first place, s. 36 of the Forgery Act, 1861, deals with such offences in connexion with registers of births, marriages, and deaths. The offence is therefore dealt with specifically by English law. The offence itself it might fall under different heads of the French Code according as it was destruction or forgery of the registers; but under the English Act these offences are grouped under the head of forgery, and therefore, applying Lord Russell's *dictum* in *re Arton* (No. 2), the English rule is satisfied.

re Arton (No. 2).
1896, 1 Q.B. 509.
cf. *ante*, p. 121.

24 & 25 Vict.
c. 98, s. 51.

Now with regard to the other cases. There is in the Malicious Damage Act, 1861, a general clause, s. 51, dealing with malicious injuries to property not otherwise provided for in the Act; therefore, although injuring vine-binds is not a specific offence in English law that would make no difference, and no reference to the hopbind section would be necessary. But in the other cases the difficulty is a serious one, because of the ultimate

reference to the English crimes included in the schedules. I think the solution of the difficulty is to be found in the application of the *mutatis mutandis* principle, which allows the substitution of corresponding though not identical terms in the application of a statute to a subject for which it was not originally framed. This subject, and illustrations of the way in which it must be applied in the case of legislation extended to the colonies, has been dealt with in my work on Nationality, and in the case of the "Applied Acts" in the law governing consular jurisdiction, in my work on Exterritoriality. Nevertheless this does not exhaust the potential difficulties of the subject, and the forced combination of a minutely specific criminal code with one drawn on broad lines must result inevitably in some cases occurring which lie outside the area of extraditable offences.

Chap. VII.
Sec. IV.

cf. Nationality,
Pt. I, p. 215.

cf. Exterritoriality,
p. 80.

I pass now to a still more serious difficulty, where new offences are created by statute which do not come within the meaning of the expressions "Acts amending or substituted for" the Acts of 1861, as used in the schedule of 1873. It must be admitted that these words cannot receive the broad interpretation, "additions to the criminal law of England." It may very well happen that, owing to the different treatment of the criminal law in England and abroad, a new statutory offence may fall within some broad head of the foreign law, but it may not. In the latter case nothing can be done if an offender against one of these laws were to escape to France; but in the former case, if France, for example, were to be guided by the same rules as we are, she would say—true, the offence falls within our law, but it does not fall within your law, and therefore the surrender must be refused. If, however, France were not guided by this principle, but acted ministerially and not judicially, then this fact would perhaps be treated as immaterial; and if the surrender were made there is nothing to prevent the prisoner being tried when he is surrendered, for the Act does not apply to his case.

Effect of
amending or
substituted Acts.
cf. p. 131.

cf. p. 33.

I am not going to emulate the learned person to whom Mr. Justice Wills referred in his judgment in *re Belencontre*, and tabulate all the crimes which may be committed with impunity in this country, so long as escape can be assured; but bearing in mind that even so late as 1905, it was found necessary to add bribery to the schedule, it is advisable to take two statutes which have added crimes to our law, in order to see whether they are extraditable or not.

re Belencontre,
1891, 2 Q. B. 192.
cf. ante, p. 207*u*.

cf. p. 35.

Chap. VII.
Sec. IV.

48 & 49 Vict.
c. 69.
cf. p. 143.

How far the
whole of the
Criminal Law
Amendment
Act, 1885, is
an "amending
Act."

cf. p. 124.

47 & 48 Vict.
c. 76.

Offences against
the Post Office.

24 & 25 Vict.
c. 97, s. 51.

36 & 37 Vict.
c. 88.

34 & 44 Vict.
c. 33.

46 Vict. c. 3.

48 & 49 Vict.
c. 49.

cf. p. 10.

First, the Criminal Law Amendment Act, 1885, a brief analysis of which has already been given. Many of the offences created by this Act are clearly in substitution for the repealed sections of the Offences against the Person Act, 1861. But with regard to some, s. 6 for example, which deals with householders permitting the defilement of young girls on their premises—the question would have to be considered whether there is any section of the Act of 1861, to which it can be said to be an addition. If I may say so with respect, the answer somewhat depends on the temperament of the Court before which the question should come; to some Judges the broad view would appeal that the Act of 1895 dealt with the protection of women and girls, and as that subject is included in the Act of 1861, this new offence may be treated as an addition to that Act. The law of extradition is administered very broadly, and the true intent and meaning of the treaties have to be ascertained; but this principle does not warrant the Court in filling up *lacunæ* in drafting; and I am not sure that the argument is altogether satisfactory.

But the Post Office Protection Act 1884, raises the same question free from this consideration.

By s. 3 of this Act, placing injurious substances in or against post office letter-boxes is prohibited; and s. 4 prohibits the sending by post of explosive, inflammable, or deleterious substances. Now it might possibly be contended that some of these acts fall within the general clause, s. 51, of the Malicious Damage Act, 1861, because the intent to damage the contents of the letter-box is so discernible in the provision as to make it really an addition to that Act. But there are other provisions; those which prohibit the sending of indecent or obscene literature through the post, and these stand alone as new offences.

The remedy for these and similar omissions is the introduction of a section into all Acts which create new offences, adding them to the schedule of the Act of 1870, as was done in the case of the Slave Trade Act, 1873. This seems to be specially needed in the case of those very special statutes to which I have already alluded—the Wild Birds Protection Act, 1880; the Explosive Substances Act, 1883; the Submarine Telegraph Act, 1885, and others of the same class. This would not of course be altogether effective, because the offence might still not fall within the foreign list of crimes in the treaty; but it would be the first step towards their subsequent introduction into those lists.

The Foreign Enlistment Act, 1870, can hardly be put in the same category; politics are too much involved in the offences it creates to look for its introduction into the treaties.

Chap. VII.
Sec. 1V.
33 & 34 Vict.
c. 50.

SECTION V.

The surrender of Subjects.—Naturalized Subjects.

The clauses which deal with the extradition of the subjects of the requested State vary considerably; the principle that subjects should be treated in the same way as other offenders against the laws of the country they have broken has found little acceptance; and it is only in the treaties with the United States and Ecuador that the agreement to surrender persons accused or convicted of crimes is not limited in some way with regard to subjects. Yet it would not have been unreasonable to expect some concession to what is very sound doctrine, where a subject has been convicted of the crime in the requiring State.

Surrender of subjects rarely absolute.

In three cases, Luxemburg, Spain, and Switzerland, England has adopted the suggestion of the Commissioners, and has agreed to a one-sided arrangement, by which "all persons" are to be delivered up by this country, but only "all persons excepting subjects" by the other contracting State. In the case of Switzerland, there is a compensating clause by which the Federal Council, in the event of its being unable to surrender a fugitive to this country by reason of his Swiss nationality, "engages to give legal effect to and prosecute the charge against him according to the laws of the Canton of his origin,"—

Unilateral agreement to surrender British subjects

Provision in Swiss treaty.

and the Government of the United Kingdom engages to communicate to the Federal Council all documents, depositions, and proofs relating to the case, and to cause the commissions of examination directed by the Swiss Judge, and transmitted through the proper diplomatic channel, to be executed gratuitously.

It is not possible, without having the laws of each Swiss Canton before us, to arrive at the exact meaning of this provision; but it is conceived that the basis of it must be that the whole of the cantonal criminal law is extra-territorial in its application to persons of Swiss nationality. Yet, at first sight, it appears to undertake that a Swiss fugitive from England shall be prosecuted for an offence against English law. This seems to be impossible from almost every point of view. But if this is

Chap. VII.
Sec. V.

not the meaning the engagement is incomplete; for all those difficulties with which we are familiar, which arise in consequence of the difference between English and foreign law, even in such apparently simple crimes as larceny or embezzlement, would operate to prevent it being fulfilled. Suppose, for example, that by the law of his Canton non-traders were not subject to the law of bankruptcy, a Swiss waiter who had committed in London an offence against the Bankruptcy Act could not be prosecuted in Switzerland. And the detail as to the collection of evidence is far from satisfactory; for the Swiss law of evidence may not correspond with the English law, and so the commissions of examination directed by the Swiss Judges would be incapable of being executed as those Judges desire them.

Variations in clauses as to discretionary surrender of subject.

In the treaties with Denmark, France, and Uruguay, the exception in favour of subjects is stated simply in the agreement clause. But it is more usually dealt with in a special clause, similar to the one in the Italian treaty;—

Absolute form.

The Italian Government shall not deliver up any Italian to the United Kingdom; and no subject of the United Kingdom shall be delivered up by it to the Italian Government.

This form is adopted in the treaties with Brazil, Germany, Guatemala, Hayti, Italy, Portugal, Salvador, Sweden and Norway.

In the treaty with Austria Hungary the clause is as follows:—

In no case and on no grounds whatever shall the High Contracting Parties be held to concede the extradition of their own subjects.

Discretionary form.

In the treaties with the Argentine, Bolivia, and Chile, the matter is left to the discretion of the Government of the requested State;—

Either Government reserves the right to refuse or grant the surrender of its own subjects or citizens to the other Government.

The same principle is adopted in the treaty with Belgium, but it is couched in the following language;—

In no case, nor on any consideration whatever, shall the High Contracting Parties be bound to surrender their own subjects, whether by birth or naturalization.

The words of emphasis have clearly been borrowed from the Austrian treaty, where they emphasise the negative obligation; but they have little or no meaning in English forms of speech, in connexion with a declaration that there is no obligation one

way or the other. It is perhaps not surprising that an attempt was made in *re Galwey*, to read into them something more than they said.

Chap. VII.
Sec. V.

The following is the more common form, and is sufficiently emphatic;—

re Galwey,
1896, 1 Q.B. 230.
cf. ante, p. 66.

Either Government may, in its absolute discretion, refuse to surrender its own subjects to the other Government.

Naturalized Subjects.

As a general rule the word "subject" is understood in the treaties to include naturalized subjects. The puzzling questions which arise in the interpretation of the English Naturalization Act, are, I believe, unknown in any other country, and for all, at least non-political, questions a fully naturalized subject is treated in all respects both in and out of the country of his adoption as a subject. It is sufficient for our purpose to treat English naturalization, but not naturalization in the English Colonies, as effecting the same result.

53 & 34 Vict.
c. 14.
cf. "Nationality,"
Part I,
Chap. VIII.

In some treaties, such as those with Belgium, and Denmark, there is a special reference to naturalized subjects, the exemption from extradition being of "native-born or naturalized subjects." The word "native-born," was explained by Wills, J., in *re Guerin*, to include those whose nationality depended either on the *lex soli* or the *lex sanguinis*.

cf. ib. Chap. XV.

re Guerin,
60 L.T. 533.
cf. ante, p. 67.

But naturalization acquired subsequently to the commission of the crime creates a little difficulty, which is sometimes specially dealt with, as in the treaty with Brazil. After declaring that subjects are not to be surrendered, article III continues,—

Effect of
naturalization
acquired after
commission of
crime.

If, however, the person who has taken refuge in the territory of the other High Contracting Party shall have become naturalized there after the perpetration of the crime, such naturalization shall not be an obstacle to his extradition according to the stipulations of this Treaty.

In the treaties in which the surrender of subjects is made either absolute or discretionary, this clause dealing with the effect of subsequent naturalization is usually omitted. The general principle is that naturalization does not relieve the person from the consequences of his previous acts; and apart from the provisions of the Naturalization Act, 1870, as I have shewn elsewhere, it is a sound principle of jurisprudence. The question therefore arises whether either the absolute or the discretionary refusal to surrender subjects includes subjects naturalized sub-

cf. Nationality,
Pt. I, p. 154.

Chap. VII.
Sec. V.

How far refusal
to surrender
subjects covers
naturalized
subjects in
respect of
prior crimes.

sequently to their offence. It is submitted that it does not; and that although a foreigner has been naturalized in England, yet he is liable to be surrendered to Austria, for example, for an offence committed in that country prior to his naturalization. The consequences might be disastrous if this were not the law; for, putting technical difficulties on one side, a subject of a country the extradition treaty with which prohibits the surrender of subjects, might evade surrender by becoming naturalized in England. The Naturalization Act only deals with the question in two cases; expatriation of British subjects, (s. 15)§, and repatriation, or re-admission to British nationality (s. 8, second para.)§; but it is submitted that this principle does not require express legislation—a change of nationality does not either absolve the person from any pre-existing liability, nor create any new liability, in respect of acts done before the change.

By the treaty with Ecuador, subjects are included in the agreement to extradite, and there is a special clause (art. VIII) providing that naturalization in the requested country “shall not prevent the search for, arrest, and surrender” of the fugitive.

In the treaty with Italy, by which the extradition of subjects is forbidden, there is also a special clause (art. IV), dealing with naturalized subjects, which strains the principle of this prohibition to the utmost. Naturalization acquired after the commission of the crime, is not to “prevent the search for, arrest, and delivery of the individual.” But after 5 years, the person naturalized acquires the full exemption of citizenship.

The extradition may, however, be refused if 5 years have elapsed from the concession of naturalization, and the individual has been domiciled, from the concession thereof, in the State to which the application is made.

§ *Naturalization Act.*

33 & 34 *Vict. c. 14.* s. 15. Where any British subject has in pursuance of this Act become an alien, he shall not thereby be discharged from any liability in respect of any acts done before the date of his so becoming an alien

s. 8 (*second para.*) A statutory alien to whom a certificate of re-admission to British nationality has been granted shall, from the date of the certificate of re-admission, but not in respect of any previous transaction, resume his position as a British subject. . . .

SECTION VI.

Political Offences.

Non-surrender of fugitives for political offences was an afterthought. It was not included in the three earliest treaties, with France, the United States, and Denmark, but after 1870, it became a feature common to all treaties; and although the principle is expressed with some slight variations of language, the point which is of chief interest is the general identity of the articles of the treaties with the language of s. 3 (1) of the Act, revealing *cf. pp. 44. et seq.* a consensus of opinion on the question among the Powers. The simplest form of the article is to be found in the treaty with the Argentine (art. VI);—

A fugitive shall not be surrendered if the offence in respect of which his surrender is demanded is one of a political character, or if he prove that the requisition for his surrender has, in fact, been made with a view to try or punish him for an offence of a political character.

In the treaty with Italy the simpler expression "political offence" is used instead of "offence of a political character."

The variations in the other treaties are merely in detail.

The most important is that introduced in the treaties with France and Belgium, and some others;—

No accused or convicted person shall be surrendered if the offence in respect of which his surrender is demanded shall be deemed by the Party upon which it is made to be a political offence, or to be an act connected with (*connexe à*) such an offence, or if he prove to the satisfaction of the magistrate, or of the Court before which he is brought on *habeas corpus*, or to the Secretary of State, that the requisition for his surrender has in fact been made with a view to try or to punish him for an offence of a political character.

The first variation from the common form contained in this article is the introduction within the exception of acts connected with political offences. This is not included in the "restrictions *cf. p. 44.* on extradition" contained in the Act; but it might well tend in some cases to simplify the consideration of this complicated question. Enough has already been said with regard to it, and I hesitate to draw upon my imagination for a concrete illustration.

The article does, however, settle one important point: that the decision of the question whether in any given case the offence is of a political character, is left to the country which is asked to

Acts "connected
with" political
offences.

Chap. VII.
Sec. VI.

surrender the fugitive. This principle is introduced in the treaty with the United States (1889) as a separate provision.

Decision as to
question left to
requested State.

If any question shall arise as to whether a case comes within the provisions of this article, the decision of the authorities of the Government in whose jurisdiction the fugitive shall be at the time shall be final.

It seems probable that the same principle would be arrived at in the case of treaties which do not contain this clause, for the simple reason that action rests with the country applied to. But there may well be differences of opinion on such a point between two Governments; and the insertion of the clause, more especially in the emphatic form of the American treaty, prevents subsequent diplomatic friction.

Officials who are
to decide the
question.

There is, however, a curious omission in the French and Belgian form; the officials referred to before whom the fact that the offence is political may be proved, are the English only—the Magistrate, the Court, and the Secretary of State; the corresponding officials of the other country being omitted. In the treaty with Denmark (art. VII), both sets of officials are given, the clause running thus;—

If in the United Kingdom he prove to the satisfaction of the Police Magistrate, or of the Court before which he is brought on *habeas corpus*, or to the Secretary of State, or in Denmark, to the satisfaction of the Minister of Justice of His Majesty the King of Denmark, that the requisition for his surrender has, in fact, been made with a view to try or punish him for an offence of a political character.

The omission of the foreign officials in the other treaties is the more remarkable as the treaty with Denmark was concluded in 1873, three years before that with France, and the Belgian treaty was concluded in 1901. It will be noted that in the Danish article, “acts connected with (*connexe à*) political offences” are not included.

In the treaties with Spain and Uruguay, the simpler and more effective form—“or if he prove to the satisfaction of the competent authority of the State in which he is”—is adopted.

One further point is to be noticed. In a few treaties there is a special provision that when the person claimed “shall have been delivered up on other grounds he shall not be punished for anterior political crimes” (Brazil). This takes the following form in the treaty with the United States;—

No person surrendered by either of the High Contracting Parties to the other shall be triable or tried, or be punished

for any political crime or offence, or for any act connected therewith committed previously to his extradition.

Chap. VII.
Sec. VI.

This provision fills a hiatus in the law as given in the English Act, to which attention has already been called; for it makes the rule absolute, and is not coupled with the provision as to the fugitive having an opportunity of returning to the country which surrendered him, which forms part of the article dealing specially with other crimes. *cf. p. 172.*

SECTION VII.

Previous Trial and Discharge.—Pardon.

Limitation of Punishment.—Concurrent Jurisdiction over Crimes.

The first paragraph of art. IV of the Argentine treaty is as follows:—

Previous trial and punishment, or pending trial for the extradition offence.

The extradition shall not take place if the person claimed on the part of Her Majesty's Government, or the person claimed on the part of the Government of the Argentine Republic, has already been tried and discharged or punished, or is still under trial in the territory of the Argentine Republic or in the United Kingdom respectively, for the crime for which his extradition is demanded.

The second paragraph deals with another point which has no affinity with the main subject, the existence of criminal proceedings for other crimes against the fugitive in the country requisitioned.

The variant in the treaty with Sweden and Norway must be noticed, for its shorter form leaves the meaning easier to arrive at.

The extradition shall not take place if the person claimed has already been tried and discharged or punished, or is still under trial in the country where he has taken refuge for the crime for which his extradition is demanded.

This provision is not universal, and is omitted in many treaties, *e.g.*, those with Belgium and Denmark.

The first paragraph of the art. V of the Argentine treaty is as follows:—

The extradition shall not take place if, subsequently to the commission of the crime, or the institution of the penal prosecution or the conviction thereon, exemption from prosecution or punishment has been acquired by lapse of time, according to the laws of the State applying or applied to.

Prescription of punishment for the extradition offence.

Chap. VII.
Sec. VII.

cf. p. 221.

The second paragraph of this article which deals with the turpitude of extraditable offences, again has no connexion with the first paragraph. It has already been considered.

A shorter form of the above provision is to be found in the Austrian treaty;—

The extradition shall not take place if, with respect to the crime for which it is demanded, and according to the laws of the country applied to, criminal prosecution and punishment has lapsed.

A clause dealing with limitation of punishment is to be found in nearly all the treaties. It has two principal variations, which are represented in the two examples quoted; the first, recognising the limiting law of either State, the second only that of the State applied to.

Effect of
previous trial
and prescription
of offence based
on concurrent
jurisdiction.

Although previous trial and punishment for the same offence (Argentine, art. IV, 1st para.), and limitation of punishment (*ib.* art. V, 1st para.), are thus kept apart in the treaties, they are closely allied, and the necessity for dealing with them together arises from this, that they spring from the same fact, and are based on a common principle. This fact is that there is concurrent jurisdiction both in the requesting and the requested State over the crime in respect of which the surrender is demanded. In the treaties with France, Spain, and Uruguay, they are more scientifically treated, and are combined in one article;—

The claim for extradition shall not be complied with if the individual claimed has already been tried for the same offence in the country whence the extradition is demanded, or if, since the commission of the acts charged, the accusation or the conviction, exemption from prosecution or punishment has been acquired by lapse of time, according to the laws of that country.

The two subjects are here referred to the law of the requested State, and when they are coupled in this way, it makes it very clear that the article is founded on the fact that there may be some jurisdiction in that country over the crime; either a jurisdiction to try the case; or that the trial may be limited or affected by its laws. In other words, these provisions raise the whole subject of concurrent jurisdiction in the two States over the crime in question, and its effect on extradition.

cf. p. 71.

The possibility of such concurrent jurisdiction existing is recognised in s. 6 of the Act; it allows the fugitive to be surrendered although the British Courts may have jurisdiction over

the crime. Apart from this, however, the treaty provisions deal with subjects which lie outside the Act.

Chap. VII.
Sec. VII.

There are some slight variations in their drafting which it is necessary to notice.

The punctuation of the article in the treaty with Sweden and Norway, as well as of that with the Argentine given above, allows this interpretation—that the extradition shall be refused if the person claimed,

(a) has already been tried, discharged, or punished, or

(b) is still under trial in the requested State.

This gives a wider scope to (a), and makes it deal with trial, discharge, and punishment in the requesting State. This interpretation of the provision is not, however, always possible, as in the case of the article in the French treaty; for that only refers to the one case of a previous trial in the requested State; pendency of trial is not mentioned.

But there is one question omitted, pardon. It is not referred to in any of the treaties in this connexion, although it might appropriately have been dealt with in either of the paragraphs of the Argentine treaty set out above.

Pardon is mentioned in the treaty with Peru, concluded in 1904, and put in force in 1907; but only in connexion with the pendency of a trial for another offence in the requested State.

I propose now to examine the different questions raised by these provisions with some minuteness.

First, let us take the simple case of a requisition for surrender for a crime committed in the requiring State.

Whether the clause in the treaties with the Argentine and with Sweden and Norway will bear the interpretation I have put upon it or not (and no question which depends on the position of a comma can be said to be clear§), it is undeniable that in the case of those treaties which deal with these questions as in the French treaty, the simple case of a person who has been tried, discharged, or punished, in the country applying for his surrender, does not fall within the four corners of the clause: and therefore if his surrender is to be refused, it must be on a principle based on the law of personal liberty in force in the requested State, acted on despite the treaty. The same remark applies also, when the

Trial, discharge,
or punishment
in requesting
State.

§ The meaning of the clause was referred to by Wright, J., in *ex parte Buddenborg*; but the judgment is very briefly reported, and the sentence is not altogether clear. The learned Judge, however, pointed out that the clause was based on the existence of concurrent jurisdiction in the two countries. *exp. Buddenborg*.
14 T.L.R. 252.

Chap. VII.
Sec. VII.

Prescription
by law of
requesting State.

Pardon in
requesting State.

Reference to law
of State where
crime committed,

treaty only refers to prescription by the law of the requested, State to the equally simple case where the punishment for the crime has been prescribed by the law of the country where it was committed. Lastly, the remark applies equally to the case of a criminal who has received a pardon in the requesting State.

In order to determine the position of a person whose surrender is demanded in any of these circumstances, the question not being dealt with by treaty or statute, we must have recourse to the fundamental principles on which extradition is based. A crime has been committed against the law of the requesting State; and although for reasons already sufficiently explained, considerable prominence is given to the law of the requested State, the fact that the crime has been committed in the requesting State, together with all legal consequences resulting from that fact, must be referred to in all questions of doubt and difficulty.

Now it is probable that in those treaties in which either all or some of these subjects are not dealt with, the reason may be found in the belief that it was not necessary to deal with them, because no country would demand the surrender of persons in the circumstances. But it is not safe to assume anything in questions of extradition; and the mere fact that any point is omitted in both treaty and Act of itself raises a question of considerable importance.

But none of these omitted cases is quite so simple as at first sight appears. For trial and discharge may not be equivalent to acquittal in the applying State, as in the case of the Scotch verdict "not proven;" and a pardon may be conditional. The practical point is therefore, not that it is unlikely that a foreign country will ask for the surrender of a fugitive whom its Courts have acquitted or punished, or its Sovereign has pardoned, but that the fugitive himself may raise the question, and the Court be bound to consider it. And the question is not an easy one. For the treaty is of positive obligation; and the requesting State might say, no exception has been made in the treaty in these cases, therefore it must be enforced. We must therefore consider whether there is any law, outside the treaty, applicable to the case of a fugitive whose surrender has been demanded, and who alleges on an application for a writ of *habeas corpus*, that he has been tried and acquitted, or has served his term of imprisonment, or has been pardoned, in the requesting country.

Two fundamental points must not be overlooked. The duty of the Secretary of State is to carry out the treaty; he has no

if these questions
raised by
prisoner.

latitude in the matter, except such as the treaty and Act combined give him. Secondly, the Courts are not the Secretary of State's advisers, though the police magistrate through his report may be in such a position. The Courts have simply to enforce the law of personal liberty.

Chap. VII.
Sec. VII.

Now, in certain old cases, the doctrine of the pleas of *autrefois acquit* and *autrefois convict* has been applied to trials in England after trials abroad for the same offence. These cases may be said to be part of the English law of personal liberty; and it is not improbable that in the cases now being considered, where the surrender has been asked for in spite of acquittal or pardon or performance of the penalty, the prisoner would be released on *habeas corpus*. But where in answer to the prisoner's case, the Crown persists in resisting his release, alleging the acquittal or pardon to be incomplete, or the penalty to have been only partially fulfilled, then the duty of the Court seems clear. Starting with the old jurisprudence of these cases, they would then enquire what the true effect of the acquittal or remission of sentence, or of the partial fulfilment of the sentence, really is; and in so doing they would of course refer to the law of the country where the offence took place; that is, to the law of the applying State. The laws of that country have been infringed; the Courts and other authorities of that country have complete jurisdiction in all matters relating to the offence; extradition is jurisdiction in aid, and therefore the claim of the applying State that its laws should be recognised is fully established. This argument is borne out by the judgment in *re Coppin*, where the effect of a foreign sentence *par contumace* was considered.

Pleas of former trial extended to foreign trials.

Effect of acquittal or remission by foreign law to be considered.

re Coppin,
L.R. 2 Ch. App. 47.
cf. ante, p. 139.

This question has arisen in two cases in which the extradition has been demanded of persons who have been convicted, but who have been allowed to be at large during the currency of their sentence, which has in the meantime been suspended. In *ex parte Buddenborg*, the prisoner had been allowed at his own request to serve the remainder of the term for an offence, for which he had been extradited, at some other time, and he had returned to England. Two years later his extradition was again demanded by Holland for the same offence, and an order of commitment was made. Wright, J., held that the prisoner could not contend that the sentence had expired, because the postponement had been granted at his own request. And in *ex parte Calberla*, to be referred to presently, the effect of a similar provision of the German law, which allowed a sentence to be

exp. Buddenborg,
14 T.L.R. 252.

exp. Calberla,
1907, 2 K.B. 861.

Chap. VII.
Sec. VII.

put into suspense on the ground of danger to life, was considered, and a similar decision arrived at.

NOTE on the PLEAS "*AUTREFOIS ACQUIT*" and "*AUTREFOIS CONVICT*."

There are only three authorities on this question. The first, a *Burrows v. Femino*, *dictum* of Lord Chancellor King in *Burrows v. Femino*, which was an action on a bill of exchange; the plaintiff's acceptance of the bill had been vacated, and declared void by a competent jurisdiction. The Chancellor "thought that sentence was conclusive, and bound the Court of Chancery here; and to this purpose he instanced the case of one Hutchinson, which was in 29 Car. II, and is mentioned in *Show. 6*, where Hutchinson having killed a person in Spain, was there produced, tried and acquitted of the murder; and afterwards returning to England, he was indicted again for the same murder here, to which indictment he pleaded the acquittal in Spain in bar, and the plea was allowed to be a good bar to any proceedings here."

R. v. Roche.
1 Leach, 134.

In *R. v. Roche*, on a trial for murder at the Cape of Good Hope, the prisoner pleaded *autrefois acquit* by the Court there. The Court discussing the question whether both this issue and that of "not guilty" should go to the jury together, said that it would be an absurdity, for "if the first finding was for the prisoner, they could not go to the second, because that finding would be a bar." *Hutchinson's case* is referred to in the report, which completes the account of it given above. The murder was in Portugal, and the prisoner being apprehended in England for the same fact and committed to Newgate, "he was brought into the Court of King's Bench by *habeas corpus*, where he produced an exemplification of his acquittal in Portugal. But the King being very willing to have him tried here for the same offence, it was referred to the consideration of the Judges, who all agreed, that as he had been acquitted of the charge by the law of Portugal, he could not be tried again for it in England."

R. v. Azzopardi.
2 Moody, at p. 291.

The question was referred to in *R. v. Azzopardi*, where the point taken was that the Murders Abroad Act, 1817, did not apply to the murder of an alien by an Englishman abroad. The Court held the point bad. During the argument the following is reported to have been said:—

"Abinger, C.J.,—Suppose the man tried for manslaughter and imprisoned for it at Smyrna, what would there be to prevent his being tried a second time in England?"

He might plead *autrefois acquit* [*sic*: read *convict*].

Cresswell, J.,—Suppose by the laws of that country murder was no offence; a homicide in a duel is not murder in France; and could a

man plead an acquittal on this ground in France, to an indictment for murder in England?

Chap. VII.
Sec. VII.

Whatever difficulty there may be in that, it does not now arise."

We must now consider what position in jurisprudence the law of the country applied to holds in these questions, in order to understand the meaning of the references to it.

The position of the law of the country applied to in jurisprudence.

In some or other of the treaties, this law is given effect to, either solely or alternatively with the law of the applying State, in the following cases;—

(a) where the fugitive has been tried (which includes the consequences of trial, discharge or punishment) in that country for the same offence;

Cases in which it may be applied.

(b) where he is under trial in that country for the same offence;

(c) where the crime is prescribed by the laws of that country; and, including as before the case omitted from the treaties,

(d) where the fugitive has been pardoned in the country for the same offence.

In order to make the questions in issue perfectly clear, it is necessary to understand in what circumstances they may arise, and the intimate connexion they have with the subject of concurrent jurisdiction.

Relation of questions to concurrent jurisdiction.

It is often assumed that concurrent jurisdiction in two countries over the same crime can only exist when it falls within the territorial law of the country where the crime was committed, and also within the extra-territorial law of the prisoner's nationality. The most familiar example of this is a case under our own Murders Abroad Act, 1817; for example, where a British subject has committed a murder in, say, Ecuador, has afterwards escaped to England, and his extradition is then demanded by the Ecuatorian Government. He is triable in Ecuador because the crime was committed there; he is also triable in England, because our law, like that of many other countries, punishes murders by subjects abroad. It is clear, therefore, that the demand for his extradition is legitimate; because by the treaty with Ecuador, subjects are included in the agreement to surrender. But suppose the prisoner to remain in Ecuador; can his extradition then be demanded by England? The answer is, yes. For the decision in *R. v. Nillins* is an authority for saying that in such a case the criminal is a "fugitive" within

57 *Geo. III, c. 53.*

Concurrent jurisdiction under territorial and extra-territorial laws.

R. v. Nillins.
53 L.J. M.C. 157.
cf. ante, p. 70.

Chap. VII.
Sec. VII.

the meaning of the law of extradition, and the Government or the Courts of Ecuador would probably take the same view. Further, neither the Act nor the treaties exclude offences against an extra-territorial law of the applying State.

Concurrent
jurisdiction under
territorial laws
of both countries.

But there is another class of cases in which concurrent jurisdiction may arise, of which the case just cited furnishes us with an example. The circumstances in which some crimes may be committed are such that the offender may fall under the territorial laws of both countries, so that the difficulties which extra-territorial laws always set up are wanting. Moreover, as no question of nationality is involved, the case may arise under any of the treaties. These circumstances are that the offender is actually present in one country, and therefore commits his crime in that country; but he operates his crime by correspondence or cable, and therefore is, by well-recognised principles of jurisprudence, constructively present in the other. It would be impossible to say that a man who, operating in England as his base, carries out frauds in Germany, does not commit a crime against the law of, and in, Germany. The *dictum* of Cave, J., in the above case has already been quoted;—"It is clear that there may be cases where a person has committed a crime in a foreign country without even being there." In these circumstances, both countries have a right to try the criminal if they can get him in the territory, and therefore each country has the right to request his surrender if he is in a third country, and also if he is in the other country.

cf. p. 71.

So far as extradition for the purposes of trial are concerned, the question is a difficult one. The surrender is sanctioned from this country by s. 6 of the Act; but in such a case it can hardly be said to be compulsory, and it seems probable from what took place in *R. v. Nillins*, that it would be treated as a matter of discretion, exercised with a view to convenience of trial. This was the view taken by Cockburn, C.J., dissenting, in *re Tivnan*, before the Act.

cf. p. 247.

re Tivnan,
5 B. & S. 645,
cf. ante, p. 72.

But the provisions of the treaties which we are now considering deal with the practical question, what is to be done when concurrent jurisdiction has in fact been exercised?

From the nature of the circumstances, if the criminal has been tried, discharged, or punished, in the country applied to, he ought not be extradited. For it is elementary justice that the offender should not be put in jeopardy twice; he has only committed one offence, and has been acquitted or condemned

by a Court which admittedly had jurisdiction over him; and this the treaties provide for. The only objection entitled to consideration would be the fact, if it were so, that the penalty is more severe in the applying State than in that which has tried him. But this is vengeance not law; and it may be the other way; for it is quite possible that a homicide might be murder in England, but only manslaughter in the other country. The treaties therefore are based on sound doctrine in thus recognising the operation of the law of the State applied to; for the question only arises in cases where there is concurrent jurisdiction, and the rule of priority between two States with equal rights is recognised. So sound is the principle, that I think it may be safely asserted that the Courts would act on it, if there were no such provision in treaty; and this is the case of pardon. To put the matter shortly, the treaties have accepted the old doctrine of our Courts of *autrefois acquit* and *autrefois convict*, as it has been extended to foreign trials.

Chap. VII.
Sec. VII.

Law of the State
applied to must
be recognised.

cf. p. 246.

It is of course impossible to lose sight of one other and now-familiar question. The procedure of one of the two States which has concurrent jurisdiction over the crime may include the "*instruction*" of the prisoner; and it is conceivable, as I have pointed out more than once, that a person accused of murder might be acquitted in England for want of evidence which the *instruction* abroad might extract from him. But this difficulty pervades the whole subject, and the treaties which we have entered into have, wisely as I think, ignored this difference in procedure. In *re Arton*, where the point was taken that the prisoner would be made to divulge supposed political offences implicating other people, Wills, J., pointed out, that the foreign procedure must take its course, and the English Courts could not concern themselves with what might happen abroad. And it is worthy of note, that in some treaties, such as that with the Netherlands, (art. XII), it is expressly provided that the procedure prior to surrender from that country shall include the interrogation by the Court of the person claimed.

re Arton.
1896. 1 Q.B. 108.
cf. *ante*, p. 59.

The extension of the principle to the case of pending trial may be justified on the same ground of prior exercise of jurisdiction, or as a natural corollary from it; because the trial, at least under English law, must end in acquittal or condemnation.

Pending trial.

We now come to the provision which recognises the law of prescription of the State applied to. At first sight this seems

Prescription of
offences.

<p>Chap. VII. Sec. VII.</p> <hr/> <p>Recognition of law of State applied to.</p>	<p>difficult to defend, for it appears to be an extension of the arbitrary rule already so much considered, that a crime to be extraditable must be a crime by the laws of both countries, and to be equally arbitrary. Suppose, for example, that fraud by a director of a public company were by the law of the Argentine punishable only within two years; it is difficult to understand why such a consideration should affect the surrender of an English director charged with fraud in England, who had made good his escape to the Republic. It seems hardly possible to construe the provision in such a way as that a person who has committed a crime in England should obtain the benefit of the law of prescription of any country to which he may escape, irrespective of the question whether it has jurisdiction over the crime.</p>
<p><i>exp. Calberla.</i> 1907, 2 K.B. 861.</p> <p>Suspension of punishment,</p>	<p>But some countenance is given to this view by the recent case, <i>ex parte Calberla</i>. A sentence was passed on the prisoner in Germany; but after a short period, he was, in consequence of ill-health, allowed to go at large, subject to the conditions imposed by German law in that behalf. The principal condition (s. 487 of the Criminal Procedure Ordinance) is that the criminal may subsequently be called upon to undergo the residue of his sentence. The prisoner in this case was in due course called upon to complete his sentence, or to furnish a doctor's certificate that a further execution of his sentence would cause apprehension of imminent danger to his life. Having failed to comply with the order, a further order was made in November, 1905, for his arrest for the purpose of completing his sentence. In April, 1907, an application was made at Bow Street for his extradition. At that time the actual period of the sentence as originally pronounced had expired, and it was argued that this was sufficient to prevent his surrender, because the sentence would have expired according to our law at the time, and therefore in accordance with the article of the treaty, "exemption from prosecution or punishment had been acquired by lapse of time according to the laws of the State applied to." The Court dealt with the argument on the broad ground that this was a German sentence, that the English law as to punishments running continuously, except where a ticket of leave has been granted, had no application to the case, and therefore that it did not fall within the article. This point has already been dealt with. But in his judgment the learned Lord Chief Justice said;—"The idea underlying article 5 seem to be the application of principles of international justice, and that idea is realised by</p>
<p>not equivalent to prescription.</p>	
<p><i>cf.</i> p. 245.</p>	

providing that where the State applied to would not, according to its laws allow the criminal to be punished, or further punished, owing to lapse of time, he shall not be punished, or further punished, by the State applying for his extradition. I have had some doubt whether, inasmuch as by our law punishment runs continuously from the date of sentence, it might not be said that at the expiration of 4 years from November 11th, 1902, [the date of the original sentence] exemption from punishment had in this case been acquired by lapse of time on November 11th, 1906. But I think that article 5 had in view the fact that Germany has certain prescribed limits of time within which alone an offender may be punished after the date of the offence. It is an article framed with a view to the laws of the State applied to, where that State by its laws puts a limit upon the time within which a prosecution may be instituted or punishment inflicted."

Chap. VII.
Sec. VII.

This appears to mean that if by the law of the requested State the offence would be statute-barred, there can be no extradition.

But, quite apart from the fact that it is difficult to find a sound reason for a rule which applies the law of criminal procedure of a country to an offence not committed within it, the language of the article is, I venture to think, clear. Exemption from prosecution or punishment must have *been acquired* by lapse of time, acquired, that is to say, by the criminal in question; and it cannot have been "acquired" by a person who has not committed a crime to which that law applies. The article can only apply to a crime committed by a person in that country, either actually or constructively; in other words, the case only arises where there is concurrent jurisdiction in the two countries over the crime. The provision is logical, and flows directly from the principles we have just discussed. The law of limitation of punishment for offences is part of the law applicable to the offence in question in the State applied to, for it has concurrent jurisdiction with this country over it. That jurisdiction, seeing that the criminal is in the country, would presumably have been exercised had it not been for the law limiting prosecution.

Exemption from punishment must have been acquired by the criminal, in the State applied to,

that is, in virtue of a jurisdiction concurrent with that of the applying State.

Prescription of punishment, at least for extradition crimes, is not a very practical question in English law, although it does exist in some cases. It may be that this is the reason why the provision does not appear in the treaty with the United States.

There remains only the question of pardon, which is omitted from all the treaties. The principle governing it cannot differ

Pardon granted in State applied to.

Chap. VII.
Sec. VII.

from those which have already been deduced as the inevitable result of the existence of concurrent jurisdiction, for it is obvious that the question could arise in no other case. Just as it seems clear that the Courts would, in the absence of any of the provisions we have been considering, give full effect to the consequences of such concurrent jurisdiction, so I think they would recognise the pardon granted by the Sovereign Authority of the State applied to.

NOTE on the EXTRA-TERRITORIAL PROVISIONS of the GERMAN
CRIMINAL CODE.

Reference has been frequently made to the extra-territorial application of criminal law; the special provisions of the German Criminal Code will therefore be useful as an example of the way in which continental nations sometimes deal with the subject. It will be noticed that the question of concurrent jurisdiction of the country where the offence was committed is also dealt with.

* p. 218.

4. No prosecution can, as a rule, be instituted with respect to felonies (*Verbrechen**) and misdemeanors (*Vergehen**) committed outside of German territory.

A prosecution may, however, be instituted, in accordance with German criminal law, in any of the following cases:—

(i) A German or foreigner may be prosecuted who, outside of German territory,

(a) has committed an act of high treason against the German Empire or against one of the States forming part thereof;

(b) has committed an offence relating to the German coinage;

(c) being a person employed in the Government service of the German Empire, or of one of the States forming part thereof, has committed an act which, according to the laws of the German Empire, is to be deemed a felony or misdemeanor* committed with regard to the Government service.

(ii) A German may be prosecuted who, outside of German territory has committed an act of treason against the German Empire, or against one of the States forming part thereof, or who has been guilty of the offence of "insult" (*Beleidigung*) against one of the Sovereigns reigning over one of the States forming part of the German Empire.

(iii) A German may be prosecuted, who, outside of German territory, has committed an act which, according to the laws of the German Empire, is to be deemed a felony or a misdemeanor,* and which, according to the laws of the place in which it has been committed, is subject to punishment. The prosecution may also take place although the person committing the act had not become a

German at the time of committing it. In the latter case, however, the prosecution will not take place except on the application of the competent authority of the State within the territory of which the punishable act was committed, and the foreign criminal law is to be applied in so far as it is more lenient than the German law.

Chap. VII.
Sec. VII.

NOTE on German
extra-territorial
law continued.

5. In the case mentioned in art. 4 (iii) a prosecution shall not take place—

(i) If the foreign Court has already adjudged on the criminal act, and if either (a) the defendant has been acquitted, or (b) the sentence has been executed.

(ii) If according to the foreign law the prosecution, or the execution of the sentence, is barred by prescription, or if the sentence has been remitted [*i.e.* in the foreign State].

(iii) If according to foreign law the prosecution could not have taken place, except on the application of a private prosecutor, and no such application has been made.

6. A contravention or police offence (*Übertretung*) committed outside of German territory can be punished only when such punishment is prescribed by special laws or by treaties.

7. Punishment suffered in a foreign country must be taken into account in determining the punishment to be inflicted, in cases where a fresh conviction ensues in German territory in respect of the same offence.

SECTION VIII.

Pendency of other proceedings.

The second paragraph of art. IV of the Argentine treaty is as follows;—

If the person claimed on the part of Her Majesty's Government, or on the part of the Government of the Argentine Republic, should be under examination for any crime in the territory of the Argentine Republic or in the United Kingdom, respectively, his extradition shall be deferred until the conclusion of the trial and the full execution of any punishment awarded to him.

Pending
proceedings for
other crimes to
be continued;
and surrender
deferred.

This paragraph deals with an entirely different order of ideas from those considered in the preceding Section, and no question of principle is involved. It merely recognises the necessity that proceedings already begun in the requested State, in connexion with any other crime, should be completed before the requisition for the person's surrender can be complied with. It corresponds with s. 3 (3) of the Act, and is generally to be found in the

Chap. VII.
Sec. VIII.

treaties, though in somewhat different forms, which are sufficiently important to be noted.

If the individual claimed should be under process, or condemned by the Courts of the country where he has taken refuge, his surrender may be deferred until he shall have been set at liberty in due course of law. (Belgium, art. XI).

If the individual claimed should be under prosecution, or in custody, for a crime or offence committed in the country where he may have taken refuge, his surrender may be deferred until he shall have been set at liberty in due course of law. (Denmark, art. X).

Minor variations occur in other treaties. These variations shew the inconvenience of the lack of uniformity in a simple matter such as this, where it is evident that the intention of all the treaties is the same. In the Danish treaty, the limitation "for a crime or offence committed in the country where he may have taken refuge," excludes the case where he may be under prosecution for an extra-territorial offence. The term "under process" in the Belgian treaty, is sufficiently wide to include arrest on civil process; but this is dealt with in the second paragraph of the above article, which runs as follows;—

In case he should be proceeded against or detained in such country on account of obligations contracted towards private individuals, his surrender shall, nevertheless, take place, the injured party retaining his right to prosecute his claims before the competent authority.

Pending
civil proceedings,
surrender not to
be deferred.

The pendency of civil proceedings is not dealt with in the Act; but in those countries where imprisonment in execution of a judgment, or on *mesne* process, is part of the regular procedure, its possible interference with extradition becomes a question of some importance, and there can be little doubt that the treaties which deal with it on the lines of the above article do so on a sound principle; for, admitting that the extradition of criminals of another State is a matter of public interest to the surrendering State, it falls within the broad principle that the public interest must prevail over private rights, so long as these are ultimately safeguarded—the right in this instance being the pressure which imprisonment exercises in inducing settlement of debts. The absence of any reference to crimes in the paragraph of the Belgian treaty leaves it, however, an open question whether the surrender may not be deferred if the person claimed is in prison on civil process at the suit of the Government. In the treaty with Italy this point is made clear, for it refers to detention "on

cf. p. 17
"motives for
extradition."

account of obligations contracted with private individuals, or any other civil claim."

Chap. VII.
Sec. VIII.

The article is not so one-sided as it at first appears, for it will find its application in the case of surrenders from British colonies, such as Hong Kong, where civil imprisonment, both in execution and on *mesne* process, is allowed.

A difficult question arose, but was not decided, under this provision, in *ex parte Van der Auwera*. The prisoner was convicted of larceny in Belgium, *par contumace*; the time for appealing expired on 9th. July, 1901, and the prescriptive period of 5 years under the Belgian Penal Code then began to run. In February, 1906, he was arrested in England on a charge of obtaining money by false pretences; he was committed on 9th. March, and on 4th. April was sentenced to 12 months hard labour. On the day of the committal for trial he was also committed for surrender on a requisition from the Belgian Government, for the original larceny. He was liberated in February, 1907, and was immediately re-arrested under the committal order for surrender, and the question was whether he could be extradited, the period of limitation having expired while he was in prison. The distinction between this and an ordinary case of postponement of surrender pending trial or punishment for another offence in England, is the interposition of the foreign law of prescription. It is curious that the question should have arisen in regard to a treaty which in its "prescription of offences" article only refers to the law of the State applied to. *cf.* p. 250. I have suggested in the discussion on the article in that form, that the prescriptive period of the law of the applying State cannot be disregarded, if the question is definitely raised by the prisoner. But in this case a difficult question of construction of the Belgian Penal Code arose; prescription of punishment is interrupted by the arrest of the convicted person—did the arrest in England in the extradition proceedings come within that article? The Court held that the question did not arise in the case, but that it was for the Belgian Court to decide when the prisoner was brought before it. This would seem to be due to the form of the article in the Belgian treaty. But suppose the same question to arise under a treaty in which the prescription article referred to the law of "the State applying or applied to"; then it would seem that the Court could not avoid interpreting the foreign law. The decision does not, with respect, throw much

exp. Van der Auwera.
1907, 2 K.B. 157.

Case where offence is prescribed during pendency of English criminal proceedings.

cf. p. 250.

cf. p. 244.

cf. p. 242.

Chap. VII.
Sec. VIII.

light on the question whether on the interpretation of the treaties, quite apart from the interpretation of the foreign law, the intervention of trial and sentence in the State applied to affects the running of the limiting period. The Belgian treaty contains no article referring to sentences *par contumace*; this fact therefore has no bearing on the decision.

9. p. 129.

SECTION IX.

Requisitions by several States.

Claims by
different States
commonly
governed by
priority of
requisition.

In the great majority of treaties, there is an article dealing with applications made by several States for different crimes committed by the same person. The commonest form accords priority to the requisition which is earliest in point of time. Thus in the treaty with the Argentine, (art. XIII), it is provided that,—

If the individual claimed by one of the High Contracting Parties in pursuance of the present treaty should be also claimed by one or several other Powers on account of other crimes or offences committed upon their respective territories, his extradition shall be granted to that State whose demand is earliest in date.

In the Belgian treaty, (art. X), this further provision is added,—
unless any other arrangement should be made between the Governments which have claimed him, either on account of the gravity of the crimes committed, or for any other reasons.

Other principles. The form adopted in the Austrian treaty, (art. VII), is entirely different. It provides that—

he shall be surrendered to the Government in whose territory his gravest crime was committed; and if his crimes are all of the same gravity, or a doubt exists as to which is the gravest,

then he is to be surrendered to the Government which made the first application.

In the Brazilian treaty, (art. VIII), yet another form is adopted. The following rule is to be observed;—

If he shall be a subject of the High Contracting Party who claims him, the surrender shall be made to it. If he be not so, the other High Contracting Party shall have the power of delivering him up to the reclaiming Government which in the case in question may appear to the former best entitled to the preference.

In the treaty with Denmark the subject is omitted; and the question naturally arises, what course would be pursued in the circumstances in regard to that country. There seems to be little doubt that the State first claiming is entitled to the preference; for the treaty is of positive obligation, and the fulfilment of the obligation is demanded by the requisition; so that from that moment the other Party to the treaty is bound to fulfil it. It is doubtful, however, whether this would apply where the summary procedure by way of magistrate's warrant has been adopted, because this does not remove the necessity for a requisition being ultimately made, and it may not be sent after all, or within the limiting time after which the prisoner is entitled to be set free.

Chap. VII.
Sec. IX.

Principle where
rule omitted
from treaty.

One case of applications being made by several States for the surrender of the same criminal does not fall within the article. It deals only with applications by several States for "other crimes" than the one for which the prisoner's surrender has already been demanded. This omits the case of demands from two or more States in respect of the same crime over which they have concurrent jurisdiction. In *Nillins' case*, for example, if the prisoner had escaped to France there might have been applications from both England and Germany. Presumably France would act on the priority of date principle, leaving the two other countries to decide the ultimate question of surrender between themselves.

Concurrent
jurisdiction.

cf. ante, pp. 70,
247.

SECTION X.

Limitation of trial to the extradition crime.

The 7th article of the Argentine treaty corresponds with s. 3 (2) *cf.* p. 60. of the Act, and is couched in practically the same language.

A person surrendered can in no case be kept in prison or be brought to trial in the State to which the surrender has been made, for any other crime, or on account of any other matters, than those for which the extradition shall have taken place, until he has been restored, or has had an opportunity of returning to the State by which he has been surrendered.

This stipulation does not apply to crimes committed after the extradition.

The condition is somewhat altered in the Austrian treaty, (art. VIII), which runs as follows;—

Chap. VII.
Sec. X.

unless such person has, after his surrender, had an opportunity of returning to the country whence he was surrendered, and has not made use of this opportunity, or unless he, after having returned there, reappears in the country to which he has already been surrendered.

Vagueness of
"until he has
been restored."
cf. pp. 27, 172.

The vague expression "until he has been restored" is altered in the Italian treaty, (art. VII), to "until he has been liberated." But these changes do not make the provision any more practical, nor its meaning clearer. In the treaties with Luxemburg and the Netherlands, more definition is introduced into the language; the opportunity of returning must occur during one month, after which, if the fugitive does not return, his liability to prosecution revives. The provision in the treaty with Luxemburg, (art. VII), is as follows;—

The period of one month [*le délai d'un mois*] shall be considered as the limit of the period during which the prisoner may, with the view of securing the benefits of this article, return to the country from whence he was surrendered.

Absolute and
not conditional
prohibition.

In some treaties, however, the condition is ignored, and the provision against trial for any other offence is made absolute. Thus article VII of the treaty with Germany provides that,—

A person surrendered can in no case be kept in prison, or be brought to trial in the State to which the surrender has been made, for any other crime or on account of any other matters than those for which the extradition has taken place. This stipulation does not apply to crimes committed after the extradition.

There can be no doubt that there is here a conflict between the treaty and the Act; but the result of it must be left to be considered when it arises.

The form of the article in the French and Spanish treaties is again different, and is linked on with another question with which it has no relation.

The present treaty shall apply to crimes and offences committed prior to the signature of the treaty; but a person surrendered shall not be tried for any crime or offence committed in the other country before the extradition, other than the crime for which his surrender has been granted.

[France, art. IV; Spain, art. III].

The insertion in some treaties of a special clause dealing with political crimes committed prior to the extradition has already been referred to.

cf. p. 173.

SECTION XI.

Convicted persons.

Accused and convicted persons are coupled throughout the treaties as they are in the Act, no distinction in principle being made between them; the procedure only is modified in a few respects in order to fit it on to the fact of the conviction. This renders the hearing unnecessary on the facts of the case, the only point required to be proved being the conviction. cf. p. 127.

Sentences *in contumaciam* are specially dealt with on lines corresponding with the decision of the Privy Council in *re Coppin*. Sentences *in contumaciam*.
re Coppin.
L.R. 2 Ch. App. 47.
cf. ante, p. 129.

The common form is the one employed in the Argentine treaty, (art. VIII);—

A sentence passed *in contumaciam* is not to be deemed a conviction, but a person so sentenced may be dealt with as an accused person.

In the Austrian, (art. IX), and many other treaties, the briefer form is used,—

No requisition for surrender can be based on a conviction *in contumaciam*.

It is doubtful, however, whether this really excludes the last part of the other form, because it deals only with a requisition based on a conviction, probably rendering the remaining provision superfluous.

In the Portuguese treaty, (art. VIII), the article runs as follows;—

A sentence passed *in contumaciam* is not to be deemed a conviction, but circumstances may cause a person so sentenced *in contumaciam* to be dealt with as an accused person.

SECTION XII.

The machinery clauses of the treaties.

The principal and important difference between the short and the long forms of the treaties is to be found in the machinery clauses. In the short form the procedure of the two countries is combined into one article; in the long form the more practical plan of making a special set of rules for each country is adopted. It will be necessary, in view of this difference, to examine briefly Difference in machinery clauses of long and short form of treaty.

Chap. VII.
Sec. XII.

an example of each class, and I have taken the treaty with the Argentine as typical of the former, that with Belgium as typical of the latter. It may be said generally that both follow in the main the machinery provisions of the Act, but there are a few not unimportant variations.

The Argentine Treaty, arts. VIII to XII.

Machinery
clauses in
treaties of the
Argentine type.

The requisition is to be made through the diplomatic agents of the two Powers respectively. This precises the somewhat indefinite language of s. 7 of the Act, which refers to "some person recognised by the Secretary of State as a diplomatic representative," which has already been referred to.

cf. p. 79.

The second paragraph of art. VIII also clears up a point which is treated indefinitely in the Act; the requisition is to be accompanied by a warrant of arrest issued by the competent authority of the applying State. Following s. 8(1), it is then further provided that it must also be accompanied "by such evidence as, according to the laws of the place where the accused is found, would justify the arrest if the crime had been committed there"; or, in the case of a person already convicted, by the sentence of condemnation by the competent Court. These conditions being fulfilled, art. IX provides that the competent authorities shall proceed to the arrest of the fugitive. The positive obligation created by the treaty is thus made clear.

cf. p. 83.

Art. X deals with the issue of a summary warrant of arrest by a magistrate prior to the receipt of the requisition; this follows the language of s. 8(2) of the Act; but the time within which the requisition must be received after the warrant is issued is fixed at 30 days, when the fugitive is to be discharged if the requisition is not forthcoming. This period varies in different treaties. In the case of Bolivia it is 60 days, and in the case of Chile and Peru, 90 days. The delay being definitely fixed by treaty, the discretion of the magistrate under the Act to fix a reasonable time, with reference to the circumstances of the case, is taken away.

cf. p. 85.

The great objection to the short form arises from the fact that in these machinery clauses it attempts the impossible, because the terms used for defining the officers are untranslatable, and therefore do not correspond. The rule governing the effect of the bilingual lists of extradition crimes cannot apply here, for it is obvious that in the procedure articles each country must follow the text which is in its own language. "Police

cf. p. 93.

cf. p. 112.

Magistrate" and "Justice of the Peace" are well-known English officials; "*Juge d'Instruction*" and "*Juge de Paix*" equally well-known French officials. The officials of the two countries not only do not correspond, but their duties have little in common; yet in the Argentine treaty "Police Magistrate" is made to correspond to "*Juez de Instruccion*," and "Justice of the Peace" to "*Juez de Paz*." So far as the issue of the summary warrant is concerned, however, the question has probably no great practical importance.

Chap. VII.
Sec. XII.

Want of
correspondence
in officials
referred to.

By art. XI, the extradition is only to take place, "if the evidence be found sufficient, according to the laws of the State applied to . . . to justify the committal of the prisoner for trial in case the crime had been committed in the territory of the same State." This follows the first paragraph of s. 10 of the Act; and it is only necessary here to refer to what has already been said upon the construction of s. 10. A provision is inserted which supplies an omission in the Act already noticed—the evidence must also be sufficient "to prove that the prisoner is the identical person convicted by the Courts of the State which makes the requisition." The sentence is incomplete, and should read "accused in or convicted by;" because the identity of the person arrested with the person charged is as important in the case of accusations as it is in the case of convictions.

cf. p. 99.

cf. p. 101.

The criminal is not to be surrendered for 15 days from the date of his committal to prison for surrender. During this period the Act provides that the prisoner may apply for a writ of *habeas corpus*. This is not expressly referred to in the treaty; but it may be presumed that in all foreign countries there is some provision for protecting liberty, that this extends to aliens, and that the intention of the treaty is therefore that this delay of 15 days is given for the purpose of allowing the prisoner to make the necessary application to the Courts. The English Act carries out this part of the treaty obligation; enquiries into the foreign law have probably shewn that a similar provision exists in the foreign country.

cf. p. 155.

In connexion with the summary procedure, art. X, as we have seen, refers specifically to the warrant being issued by any police magistrate or justice of the peace; but there is no reference in art. XI to the Court or officer before whom the hearing is to take place. Assuming, as is probable, that the Argentine officials correspond to the French, the hearing will be before the *Juez de Instruccion*; and therefore the treaty indirectly but very defi-

Indirect
recognition of
"instruction."

Chap. VII.
Sec. XII.

cf. p. 100.

nately, recognises the procedure so often referred to, the "*instruction*." As I have already said, this is inevitable; and the only criticism on which I shall venture is, that this recognition seems to lurk in the hidden meanings of clauses in the treaties, whereas it should be clearly stated.

re Counhaye.
L.R. 8 Q.B. 410.
cf. ante, pp. 98, 100.

Effect of
recognition of
"*instruction*."

This brings to a head the remarks I have already made on this subject. By art. XII, which corresponds with s. 14 of the Act, the sworn depositions or statements of witnesses taken in the applying State are to be admitted as valid evidence in the State applied to. In *re Counhaye*, it was said that the English magistrate should give such weight as he thinks fit to evidence taken abroad which does not conform to the rules of evidence. It is doubtful whether this is consistent with the treaty, which has no such limitation. And with regard to the evidence obtained by the "*instruction*," we have an express direction that the evidence taken in the foreign State, which must include evidence taken by this method, shall be received as valid evidence. Thus it follows that on the hearing of extradition proceedings in a case of murder, if the fugitive has escaped after the "*instruction*," during which a confession, or other important evidence, has been extorted from him, his surrender is inevitable. And, on the other hand, a prisoner may be surrendered to England on evidence which would not be receivable in our Courts. When the trial comes on in England this evidence would not even be put forward by the Crown; but the mischief is already done. It is hardly conceivable that in such circumstances the prisoner would elect to give evidence at the trial; for the result of the "*instruction*" would furnish the Crown with a very powerful weapon for cross-examining him.

The Belgian Treaty, arts. II to IV.

In the long form the procedure on the requisition in each country is dealt with separately.

Procedure in
England.

Art. II deals with the procedure to be followed in Great Britain on a requisition made by Belgium.

The requisition is to be made to the Secretary of State for Foreign Affairs by the Belgian Minister or other diplomatic agent, and is to be accompanied by a "warrant of arrest or other equivalent judicial document issued by a Judge or magistrate duly authorised to take cognizance of the acts charged against the accused in Belgium."

There must also be duly authenticated statements on oath taken before such Judge or magistrate, "clearly setting forth the said acts, and containing a description of the person claimed, and any particulars which may serve to identify him." The Secretary of State is to transmit the documents to the Home Secretary, who is then to issue the necessary order (under s. 7 of the Act) to some police magistrate in London, "and require him, if there be due cause, to issue his warrant for the apprehension of the fugitive." The next three paragraphs reproduce ss. 8(1), 9, 10(1), and 11 (1st paragraph), of the Act; with this variation, the 15 days respite of the last provision is altered to a period "which shall never be less than 15 days."

Chap. VII.
Sec. XII.

Provisions of the
Act reproduced.

In the case of a person convicted, the warrant transmitted with the requisition is to clearly set forth the crime of which the person claimed has been convicted, and to state the fact, place, and date of the conviction. The paragraph then reproduces s. 10(2) of the Act.

The last paragraph of the article, which applies to cases both of persons accused or convicted, gives s. 11 of the Act in a condensed form—the right of the prisoner to apply for a writ of *habeas corpus*; and concludes with words which fill up a small hiatus in the section—"if he should so apply, his surrender must be deferred until after the decision of the Court upon the return to the writ, and even then can only take place if the decision is adverse to the applicant."

Art. III deals with the procedure to be followed in Belgium on requisitions made by Great Britain.

Procedure in
Belgium.

The requisition and accompanying documents, defined as in art. II, presented by the British Minister or other diplomatic agent, are to be forwarded by the Minister for Foreign Affairs to the Minister of Justice, who is to forward the same to the "proper judicial authority," *à l'effet de voir rendre le dit mandat d'arrêt exécutoire* (as it is put in the English text, "in order that the warrant of arrest may be put in course of execution") by the *Chambre du Conseil du Tribunal de Première Instance* of the place of residence of the accused or of the place where he may be found.

The expression "put in course of execution," ("*rendre exécutoire*"), not in very common use in English law, refers to a fundamental difference between English and foreign procedure. The point has already been emphasised that currency is not given to the foreign warrant in England. But on the continent, the

English
warrant made
"executory."

cf. p. 106.

Chap. VII.
Sec. XII.

cf. Foreign
Judgments,
Pt. I, p. 9.

English warrant of arrest is given executory force. This is the regular form for an order in continental countries when effect is to be given to a foreign document. For example, in England in an action on a foreign judgment, an English judgment is given which thenceforward becomes the basis of all subsequent proceedings; but according to continental procedure in proceedings on a foreign judgment, an order (*exequatur*) is given making that judgment executory.

cf. p. 199.

The fundamental fact remains the same in both systems, that the warrant of arrest has no executory force outside the country in which it is issued. We do, however, come across here the point on which I have dwelt in the preliminary discussion of the treaties; that we know nothing of the law of extradition of the foreign country with which a treaty is concluded. The English principle that currency is not given to the foreign warrant is of first importance, because of the question which must be discussed in the auxiliary proceedings, whether an offence against English law is disclosed on the facts. What I have called the "transplanting" of the facts to the requested State is in the Belgian treaty ensured on both sides by the proviso to the article, (art. I), containing the list of extradition offences—"the commission of the crime shall be so established as that the laws of the country where the fugitive or person accused shall be found would justify his apprehension and commitment for trial if the crime had been there committed"; but we do not know whether this process of examination into the facts is subjected in Belgium to the further test that it must disclose an offence according to the law of Belgium.

Bail.

The next paragraph provides that "the foreigner may claim to be provisionally set at liberty in any case in which a Belgian enjoys that right, and under the same conditions," the application being submitted to the *Chambre du Conseil* already referred to. This corresponds to our release on bail; and it is somewhat singular that there is no corresponding provision in the article which deals with English procedure, more especially as the question of bail in extradition proceedings in England is not free from doubt.

cf. p. 94.

The hearing.

From this point the procedure differs much in detail, though not in principle, from our own. The Government "takes the opinion" of the *Chambre des Mises en Accusation de la Cour d'Appel*, within whose jurisdiction "the foreigner" has been arrested. This is the equivalent of our hearing of the case before

the magistrate; it is to be public unless "the foreigner" should demand that it should be with closed doors. The public authorities and "the foreigner" are to be heard; and the latter may obtain the assistance of counsel.

Chap. VII.
Sec. XII.

The persistent reference to "the foreigner" is remarkable, because under the Belgian treaty subjects may be extradited (*re Galwey*); and one of the underlying principles of the subject as we understand it, is that the surrendering State has a right to insist on guarantees in favour of all persons it surrenders, irrespective of their nationality. Thus art. VI, which limits the right of trial to the extradition offence, is general in its terms. The presumption would seem to be that a Belgian subject has these different rights independently of the treaty.

References to
"the foreigner."
re Galwey.
1896, 1 Q.B. 220.
cf. ante, p. 66.

Within a fortnight from the receipt of the documents they are to be returned "with a reasoned opinion," to the Minister of Justice, "who shall decide" (*statuera*), and may order the accused to be surrendered to the person duly authorised by the British Government. The word "*statuer*," although translated "decide," does not connote any more than "take the necessary decision" in the matter; it does not give the Belgian Minister any greater power to refuse than is possessed by the English Secretary of State.

Order of
Minister of
Justice.

In the case of convicted persons, clause 2 of the article corresponds, *mutatis mutandis*, with the second part of article II.

There is a lack of correspondence between the two procedures on one or two points.

The English procedure article contains two clauses, based on the Act, dealing with the evidence necessary for the issue of the warrant, and to justify the surrender: it is to be such as would be required for the issue of a warrant, and would justify committal for trial, if the crime had been committed in England. Neither of these clauses appears in the Belgian article; but, as pointed out above, the question of the evidence for surrender is covered by the proviso to art. I. Secondly, the paragraph relating to the fugitive's right to apply for a *habeas corpus* is not contained in art. III. But, as was pointed out in the case of the Argentine treaty, it is not unreasonable to suppose that there is in Belgian procedure some means provided for the release of persons unjustly detained in prison, or for testing the validity of their detention; and it is improbable that a foreigner would be excluded from availing himself of it. The point of the provision in the Act and in art. II, is that the prisoner is to be specially

Differences
between Belgian
and English
procedure.

Chap. VII.
Sec. XII.

informed of the fact, and that a reasonable delay is to be accorded to him to decide whether he will avail himself of it.

On the other hand, the hearing of the case in Belgium is entrusted to a higher tribunal than in England, a Section of the Court of Appeal, instead of before a magistrate, the English Courts only coming into the matter if appealed to by the prisoner. The requirement that the "reasoned opinion" shall be delivered within a fortnight would seem to be peremptory; and it is counted from the receipt of the documents, and not from the conclusion of the hearing.

Summary
warrant.

The summary procedure by arrest on magistrate's warrant is dealt with in art. IV, which is practically the same as art. X of the Argentine treaty. But the Belgian treaty having been concluded in 1901, after the question which arose on the extradition of Dr. Hertz had been decided, the fugitive, when arrested in the United Kingdom, is to be sent before "a competent magistrate," instead of before "a police magistrate in London." The importance of this question has already been dealt with.

cf. pp. 167, 204.

The delay for sending in the requisition after the arrest has been effected is fixed at 14 days.

Treaties in
which summary
procedure
omitted.

The summary procedure by magistrate's warrant is not included in the treaties with Brazil, Germany, Hayti, Italy, Liberia, Luxemburg, Monaco, Nicaragua, Norway, Portugal, Roumania, Russia, San Marino, Servia, Sweden, the United States, and Uruguay.

Legal effect of
omission
considered.

The question which arises in consequence of this omission necessitates a final reference to fundamental principles, and it is perhaps one of the most curious—Does it prevent the issue of this warrant in the case of fugitives from these countries? The answer, it is conceived, must be in the negative; for the procedure is sanctioned by the Act.

The Act is general and not special; it does not profess to enforce all the provisions of any given treaty; nor does it require that all its provisions should be incorporated into every treaty. It lays down certain restrictions in s. 3; but beyond this it legalises the procedure necessary in general to carry into effect extradition arrangements. It does not concern itself with the details of the arrangements, so long as they do not require the assistance of the law to carry them into effect. What then is the position of affairs if some of its provisions are not included in any given treaty? If it were expressly stipulated that this

procedure should not be used, then the treaty would be paramount, because the Act, in this respect, is permissive and not compulsory. But if it is silent on the point, there appears to be nothing to prevent the warrant being issued. In such cases the power granted to the magistrate to act pending receipt of the requisition becomes in effect a unilateral provision, standing in the same position as the wider unilateral provisions of Cyprus, Canada, and the Straits Settlements. The law, therefore, allows it to be used in England; but the treaty does not impose a corresponding obligation on the foreign country to create a similar procedure in the case of fugitives from the British dominions.

Chap. VII.
Sec. XII.

cf. Chap. V,
Sec. II.

The long form is used in the treaties with Belgium, Denmark, Ecuador, France, Spain, Switzerland and Uruguay; and in a form which, though less elaborate, still preserves the main idea of dealing with the procedure in the two countries in separate articles, in the treaties with Monaco, the Netherlands, Portugal, Roumania, Russia, San Marino, and Servia.

The treaty with Switzerland deals specially with "the event of the application of this treaty being contested."

A requisition to Switzerland for surrender is dealt with in the first instance by the Cantonal Government in whose territory the person charged is found; a report is then sent to the Federal Council, which examines the case, and if there is no opposition, grants the surrender. But if the application of the treaty is contested, the matter is forwarded to the Federal Tribunal, "whose duty it is to decide definitely the question whether extradition should be granted or refused."

SECTION XIII.

The subsequent proceedings.

After having determined, in the last paragraph of s. 8, the period of time within which the requisition must be forthcoming after an arrest upon a magistrate's summary warrant, the Act leaves things to take their ordinary course, till the matter is finally decided. Then, within two months after his committal, or after the decision of the Court upon the *habeas corpus*, he is, by s. 12, to be surrendered and conveyed out of the country, or else the

Delay for
requisition after
issue of summary
warrant.

Chap. VII.
Sec. XIII.

Court will order him to be discharged, unless good cause is shewn to the contrary.

Delay for
producing
evidence.

But here the treaties come in, and in many instances settle the delays for the other steps in the proceedings. A very common form is to require the evidence for the extradition to be produced within two months of the apprehension; thus in the Argentine treaty, (art. XIV), it is provided that—

if sufficient evidence for the extradition be not produced within 2 months from the date of the apprehension of the fugitive, or within such further time as the State applied to, or the proper tribunal thereof, shall direct, the fugitive shall be set at liberty.

This article has a wider scope than s. 8, its position in the treaty shewing that it applies as well to the ordinary as to the summary procedure.

In the Austrian treaty, (art. XIV), the power to extend the time does not exist.

If sufficient evidence for the extradition be not produced within 2 months from the date of the apprehension of the fugitive, he shall be set at liberty.

The Belgian treaty, (art. V), combines this provision with that of s. 12 of the Act:—

If within 2 months, counting from the date of the arrest, sufficient evidence for the extradition shall not have been presented, the person arrested shall be set at liberty. He shall likewise be set at liberty if, within 2 months of the day on which he was placed at the disposal of the Diplomatic Agent, he shall not have been sent off to the reclaiming country.

This article follows immediately after the one which deals with the summary procedure; it might therefore be argued that it is limited to that case.

In some treaties, as that with Denmark, the only provision is one which corresponds with s. 12 of the Act.

Occasionally, however, we come across special provisions in precisely the opposite sense, giving a considerable latitude to the requisitioning State in the matter of production of evidence.

Special
provisions
extending delay.

Thus, in the French treaty, (art. VI, last para.), notice is to be sent to the British representative—

should it so happen that the documents furnished by the British Government, with the view of establishing the identity of the fugitive criminal, and that the particulars collected by the agents of the French police with the same view, be considered insufficient,

in order that further evidence may be furnished to establish the identity of the prisoner, or to throw light on other difficulties in the examination.

Chap. VII.
Sec. XIII.

This clause also appears in the treaty with Uruguay, (art. VI); but there is a further clause limiting the time within which this new evidence must be produced. The arrest is not to be prolonged more than 3 months.

At the expiration of that period, if the Government making the claim shall not have fulfilled the condition above stated, [*i.e.* furnished new proofs], the prisoner shall be released, and shall not be liable to be re-arrested on the same charge.

There are no corresponding provisions in the article dealing with the English procedure.

The following Time Table for surrenders from England may be useful for reference. The different periods vary in every treaty, and some are occasionally omitted; but those given will be found to be the average, except where otherwise indicated. It is not possible, in view of the varied provisions in the treaties, some of which have been noted above, to give any corresponding methodical statement as to the procedure in other countries.

TIME TABLE

FOR SURRENDERS FROM ENGLAND.

WARRANT ISSUED ON REQUISITION.	WARRANT ISSUED BEFORE REQUISITION.	
	<i>Requisition to be sent in.</i>	
	[Act] reasonable time after report to Secretary of State, to be fixed by magistrate.	
	[Treaty] 30* days.	* Period varies in every treaty.
<i>Evidence to be presented on hearing.</i>	[Treaty] 2 months** after arrest, § [with power of extension by State applied to, or its Courts].	** 90 days,— Panamá.
<i>Delay for surrender after committal.</i>	[Act and Treaty] 15 days [<i>or</i> , not less than 15 days].	
<i>Surrender and conveyance out of United Kingdom.</i>	[Act and Treaty†] within 2 months after committal, or adverse decision on <i>habeas corpus</i> , [with power of extension], unless sufficient cause shewn to the contrary; otherwise fugitive to be discharged.	

§ The special provisions in some treaties must be referred to; *e.g.*, with France and Uruguay—*cf.* p. 266.

† This provision is not common in the treaties. In the treaty with Brazil the time runs from the day on which the fugitive was placed at the disposal of the Diplomatic Agent. In the treaty with Italy the time runs from arrest, or adverse decision on *habeas corpus*.

Chap. VII.
Sec. XIII.

Delivery of articles seized.

The question of delivering articles seized upon the prisoner is omitted from the Act, but it is dealt with in nearly all treaties. The matter is left to the discretion of the competent authority of the State applied to. This provision is not limited to stolen articles, but includes "everything which may serve as a proof of the crime"; things which abroad are called *pièces de conviction*.

Articles seized
on fugitive to
be delivered
with him.

A very complete form of this provision is to be found in the Belgian treaty, (art. XII).

Every article found in the possession of the individual claimed at the time of his arrest shall, if the competent authority so decide, be seized, in order to be delivered up with his person at the time when the surrender shall be made. Such delivery shall not be limited to the property or articles obtained by stealing or by fraudulent bankruptcy, but shall extend to everything that may serve as proof of the crime. It shall take place even when the surrender, after having been ordered, shall be prevented by reason of the escape or death of the individual claimed.

Rights of third
parties protected.

The rights of third parties with regard to the said property or articles are, nevertheless, reserved.

The variations in other treaties are insignificant, and do not require notice.

exp. Otto.
1894, 1 Q. B. 420.

This provision, in the French treaty, was discussed in *R. v. Lushington, ex parte Otto*, in the following circumstances. A robbery of jewellery had been committed at Dieppe, and one Ebstein, who was suspected of being concerned in it, was extradited. Some of the jewellery was discovered in Otto's possession. He was examined as a witness in the extradition proceedings, and under a *subpœna duces tecum* produced the property, which he alleged he had bought from Ebstein, and which was identified by the owner. The magistrate told the police officer in Court to take charge of the property so that it might be produced at the trial in France, but made no order to that effect. He also stated that the right to the property was unaffected, and was reserved to all parties. A rule *nisi* was obtained under s. 5, of the Justices Protection Act, 1848, calling on the magistrate to shew cause why he should not make an order for the delivery of the property to the applicant. The magistrate considered that he had jurisdiction to make the order under the general provision of s. 9 of the Extradition Act, giving him "the same jurisdiction and powers" as if he were trying an

11 & 12 Vict.
c. 44.

cf. p. 98.

English case. Wright, J., without giving a definite opinion on the point, thought that there was a good deal to be said for the proposition, "that when you find the preliminary stages of an investigation applied, not for the purposes of a trial in this country, but for the purposes of a trial abroad under the Extradition Acts, the magistrate here should have similar powers with reference to the commitment under the Extradition Act as he would have with reference to commitment for trial here, and that, in some cases at any rate, he would have power to preserve evidence for the use of the foreign tribunal. I cannot help thinking that there may be cases in which the Court here would hold the magistrate justified in handing over evidences without which the Extradition Act would be futile in its application to the particular case."

Chap. VII.
Sec. XIII.

Magistrate's
power to dispose
of property
seized.

The matter was left in this indefinite state owing to its omission from the Act, and the Court did not express the opinion, acted on in a later case, that the treaty itself is the magistrate's warrant for dealing with the property. But apart from this, the Court held that the section of the Act of 1848, was not intended to authorise persons having private grievances of this kind to obtain an order upon a magistrate to do something outside the ordinary course of his judicial functions; it only enabled the Court to order the magistrate to perform his duty; and in extradition proceedings, after he has made the order of committal for surrender he is *functus officio*. Further, the applicant had no right to the relief he asked; for under the treaty the Court had not to try the question of title, the rights of third parties being expressly reserved. At a later stage the Court would decide whether he had any title, or whether the French Courts had the right to decide that question. Finally, any possessory title which his purchase might have given him, had been lawfully divested from him under the direction of the Court; for articles produced and put in evidence at a trial are *in custodia legis* (*R. v. Clifford*). His proper course was to bring an action for the recovery of the property against the persons in whose custody it was, and for an injunction to restrain them from parting with the goods until the trial; whether he would have succeeded or not is another matter.

After committal
magistrate is
functus officio.

R. v. Clifford,
1 C. & P. 521.

The question again arose in *re Borovsky and Weinbaum, ex parte Salaman*. The debtors were foreigners carrying on business in London and Antwerp. Their extradition was demanded by Belgium; and when they were arrested on 10th. March, a considerable quantity of valuable property was found in

re Borovsky,
1902, 2 Q.B. 312.

Chap. VII.
Sec. XIII.

their possession. On 14th. March a receiving order was made against them in respect of an act of bankruptcy committed by them on 5th. March. They were adjudicated bankrupt on 19th. March, Salaman being appointed trustee. On 17th. March they were adjudicated bankrupt in Belgium, and four days later the Belgian Court set back the bankruptcy to 26th. February. On 19th. April they were committed for surrender, but the Bow Street magistrate declined to make an order with regard to the property, on the ground that he was not the "competent authority" under article XII of the Belgian treaty. A fortnight later the Belgian curator applied to rescind the receiving order and stay the English bankruptcy proceedings, and for an order handing the property over to him; but this was refused on the ground that these proceedings were commenced before the proceedings in Belgium†. Thereupon the trustee applied for an order for delivery up of the property to him, as part of the estate divisible among the creditors. Wright, J., held, first, that the Commissioner of Police was right to retain the property, but that he could not hand it over to the Belgian authorities without an order of the Court. Secondly, that it could not be handed over to the trustee until the "competent authority" had decided what portions of it were required for the purposes of the trial in Belgium. Thirdly, that the competent authority in the first instance was the Bow Street magistrate, whose duty it was to decide this question. Fourthly, that the order for handing it over should have the concurrence of the Secretary of State, and that a stipulation should be made that it should be returned to this country after the criminal proceedings in Belgium had terminated. After that, the property would be returned to the trustee, who would hold it until the question of title was decided, a time being probably fixed within which the Belgian or other claimants might come in to prove their title. These various opinions were in due course given effect to. It will thus be seen that the learned Judge considered that the stipulation in the treaty as to handing over the property was binding on the Court; and also that the provision as to safeguarding the rights of third parties was as binding on the Belgian Government; and this Government acquiesced in this view.

The "competent authority" to order delivery of property.

† The interesting questions to which this case, *re Hermanos*, gave rise in the Court of Appeal (24 Q. B. D. 640), are discussed in "Foreign Judgments," Part. III, pp. 116, *et seq.*

*Costs of extradition.*Chap. VII.
Sec. XIII.

The arrangement as to the expenses of extradition varies in different treaties. In the Argentine treaty, (art. XVI), they are to be borne by the demanding State. In the Austrian treaty, (art. XVI), they are, on the contrary, to be borne by the surrendering State, up to the point when the fugitive is conveyed to its frontier. This term is not very applicable to England, but it would probably be interpreted to mean until the prisoner is put on board ship.

There is yet another form to be found, of which article XV of the Brazilian treaty is an example, in which each country renounces its claim against the other for costs.

Variations in
form of provision
as to costs.

The High Contracting Parties renounce whatever claims they may have for the reimbursement of the expenses incurred for the apprehension and maintenance of the persons to be delivered up, and for their conveyance until they shall be placed on board ship, as they agree to defray these outgoings in their respective countries.

In the treaty with Luxemburg, (art. XIII), the provision includes "the expenses incurred in taking the evidence of any witness in consequence of Article XI, and in giving up and returning seized articles." In the treaty with the Netherlands, the clause is still more complete; the following being added,— "and of sending and returning the papers containing proof of the crime, or other documents"; but in the case of extradition to and from Canada, the expenses are to be borne by the demanding State.

Where transit through a third State is provided for, the costs are generally made to fall on the demanding State, as in the treaty with San Marino, (art. XVI).

Costs of transit
through third
State.

cf. p. 163.

The expenses of transport or other necessary expenses by sea or through the territories of a third State shall be borne by the demanding State.

CHAPTER VIII.

Extradition in the Empire.—The Fugitive Offenders Act.

Early provisions dealing with fugitives in the dominions.

31 Car. II, c. 5.

THE first attempt to make the three Kingdoms, with the islands and plantations of the Sovereign, in some measure homogeneous in the administration of the criminal law is to be found in s. 15 of the Habeas Corpus Act, which is still in force. It is limited to capital offences; but in the 17th. century this included a somewhat extended list. The section provides that—

if any person or persons at any time residing in this realm shall have committed any capital offence in Scotland or Ireland, or any of the islands or foreign plantations of the King, his heirs or successors, where he or she ought to be tried for such offence, such person or persons may be sent to such place, there to receive such trial, in such manner as the same might have been used before the making of this Act; anything herein contained to the contrary notwithstanding.

cf. p. 11

The germs of the modern law are also to be found in some of the old cases referred to in the opening chapter. But the first attempt to deal with the subject methodically was not taken till 1843, when an Act was passed, the preamble of which was as follows;—

6 & 7 Vict.
c. 34.

Whereas it is expedient to make more effectual provision for the apprehension and trial of offenders against the laws who may be in other parts of Her Majesty's dominions than those in which their offences were committed;—

44 & 45 Vict.
c. 69.

This Act was replaced in 1881 by the Fugitive Offenders Act, which, except for the repeal of two formal sections and the schedule, by the Statute Law Revision Act, 1894, has not been amended.

The independence of the colonies.

The theory of the constitution is that the different parts of the Empire are separate jurisdictions, each with its own legislative and administrative independence, subject only to the power of Parliament to legislate for the whole or any part. The same necessity for legislation in the matter of the surrender or return

of fugitive criminals exists, therefore, as between the different parts of the dominions as it does between the United Kingdom and foreign countries. It should, however, be borne in mind that it would be strictly constitutional for an arrangement to be made between two neighbouring colonies, such as Hong Kong and the Straits Settlements, mutually to return fugitive criminals. But the expediency of dealing with the question comprehensively by imperial legislation is obvious.

There is no reason to believe that in the early days of the King's dominions any different constitutional principle was recognised. With regard to executive action independent of legislation, it would appear from the above section of the Habeas Corpus Act, that before the passing of that Act practical steps to secure the return of fugitive criminals in different parts of the Empire were customary, which would have been in conflict with that Act. It would be useless to enquire whether they were justifiable or not; it is sufficient to say that the constitutional question which in such a matter as extradition governs the relations between two independent nations, is not in every respect identical with that which governs the relations between the component parts of the same Empire. Indeed it does not seem altogether impossible to contend that here there may be a duty to extradite. However this may be, it is not now a practical question, for the Act of 1843 was based on colonial-constitutional lines, and recognised the legislative and administrative independence of the colonies small and great, and these principles have been perpetuated and developed in the Act of 1881.

A law such as this does not exist in any other Empire, for the simple reason that it is unnecessary. No other Empire is heterogeneous as ours is. The colonies and dependencies of foreign countries are integral parts of the mother-country. Hence in such a matter as dealing with fugitive criminals, the procedure, in France, for example, is of the simplest. A *mandat d'arrêt* is obtained; it is sent to a colony to be executed, and it is executed without more.

The preamble of the Act of 1881 refers to the amendment of "the law with respect to fugitive offenders in Her Majesty's dominions," and also to "other purposes connected with the trial of offenders." These latter provisions deal with certain minor matters of detail, the importance of which can only be appreciated in the distant colonies where the necessity for them occasionally arises.

Principle
inapplicable
to colonies of
foreign States.

Chap. VIII.

General scheme
of Act.

The general scheme of the Act is developed on lines which run parallel with those of the Extradition Act, but the procedure is much simplified. It is one of those cleanly-drawn Acts which effect their purpose without much disturbance, working smoothly and effectively, so that few cases arise out of it in the Courts. The only principle involved in it has already been indicated; a paraphrase is, therefore, all that is necessary to understand its working. The few decisions on the subject will be considered afterwards.

Part I deals with the "Return of Fugitives;" and s. 2 provides that if a person who is accused of having committed an offence, as defined in s. 9, in one part of the dominions has left that part, and is found in another part, he is liable to be apprehended and returned to the part from which he is a fugitive.

Returnable
offences.

The net is cast much wider than in the Extradition Act, and the return of fugitives may be made in respect of the following offences—treason and piracy; and every offence, whether called felony, misdemeanor, crime, or by any other name, which is for the time being punishable in that part of the dominions in which it was committed, either on indictment or information, by imprisonment with hard labour for a term of 12 months or more, or by any greater punishment.

Definition of
"imprisonment
with hard
labour."

Then follow two provisions designed to meet questions which must arise from the varied systems of law in force in different parts of the Empire;—

For the purposes of this section, rigorous imprisonment, and any confinement in a prison combined with labour, by whatever name it is called, shall be deemed to be imprisonment with hard labour.

This Part of this Act shall apply to an offence notwithstanding that by the law of the part of Her Majesty's dominions in or on his way to which the fugitive is or is suspected of being, it is not an offence, or not an offence to which this Part of this Act applies;

and all the provisions of this Part of the Act are to apply as if the offence were an offence in that part of the dominions to which it applies.

It is probable that the old French penalty of *réclusion*, formerly in force in Mauritius and other colonies of French origin, would have come within the meaning of the term "rigorous imprisonment."

The area through which the Act extends is defined in s. 37. Chap. VIII.
 In the first place, it extends—

to the Channel Islands and Isle of Man as if they were part of England and of the United Kingdom, and the United Kingdom and those islands shall be deemed for the purpose of this Act to be one part of Her Majesty's dominions. Extent of application of Act.

The effect of this provision is to make of the British Islands one coherent whole for the purposes of the Act; and to this end the section further provides that—

a warrant endorsed in pursuance of Part I of this Act [*i.e.* a warrant issued in any part of the dominions and endorsed in England Scotland, Ireland, the Channel Islands, or the Isle of Man] may be executed in every place in the United Kingdom and the said islands accordingly.

The second part of the definition relates to Part II of the Act.

Correlative to this section is the definition in s. 39, of "British possession," creating the colonial entities which are necessary to the working of the Act. Definition of "British possession."

The expression "British possession" means any part of Her Majesty's dominions, exclusive of the United Kingdom, the Channel Islands and the Isle of Man;

The "parts" of the dominions are recognisable by the governing authority, and the area, as defined in charters, statutes, Orders in Council, and other documents, over which its authority is exercised; and this furnishes a convenient method of designating them in the Act. The parts of the Empire. The definition therefore continues,—

All territories and places within Her Majesty's dominions which are under one Legislature shall be deemed to be one British possession and one part of Her Majesty's dominions; and finally, in order to deal with the fact that in the greater dominions there are subordinate Legislatures, as in British India, this further definition provides that—

The expression "Legislature," where there are local Legislatures as well as a central Legislature, means the central Legislature only.

In British India, however, the Governors and Lieutenant Governors of the Presidencies have equal power under the Act with the Governor-General.

The Empire being thus partitioned for the purposes of the Act, the Protectorates and places in which the King's foreign jurisdiction is exercised, are dealt with; and s. 36 provides that— The Protectorates, and places under foreign jurisdiction.
 it shall be lawful for Her Majesty from time to time by Order in Council to direct that this Act shall apply as if,

Chap. VIII.

subject to the conditions, exceptions, qualifications (if any) contained in the Order, any place out of Her Majesty's dominions in which Her Majesty has jurisdiction, and which is named in the Order, were a British possession, and to provide for carrying into effect such application.

This section duplicates the provision of s. 5 the Foreign Jurisdiction Act, 1890, which gives power to extend the enactments in the first schedule to that Act "to any foreign country in which for the time being Her Majesty has jurisdiction," because the Fugitive Offenders Act is included in that schedule. The second sub-section of s. 5 provides that—

thereupon those enactments shall, to the extent of that jurisdiction, operate as if that country were a British possession, and as if Her Majesty in Council were the Legislature of that possession.

As already indicated, the extension of the Fugitive Offenders Act to these territories and countries falls well within the lawful exercise of that jurisdiction. There may be a question in the case of those oriental countries where there is foreign jurisdiction simply, and no protectorate, because the jurisdiction of the oriental Sovereign continues. But this has been dealt with in another work. Its exercise seems to be warranted by sufferance, on which a considerable part of the executive jurisdiction depends.

cf. Exterritoriality,
P. 194.

Executive
authorities
under the Act.

The executive authorities who are authorised to make the necessary orders for the return of the fugitive, are as follows;—
in the United Kingdom, a Secretary of State [s. 6];
in Ireland, the Lord Lieutenant or Lords Justices or other chief Governor or Governors of Ireland, and the Chief Secretary to the Lord Lieutenant, as well as a Secretary of State [s. 11];
in the Colonies, the Governor, or person or persons administering the Government [ss. 6, 39];
in India, the Governor-General, and the Governor or Lieutenant Governor of any part of India [s. 39];
in Protectorates, or countries under foreign jurisdiction in which the Act is applied by Order in Council, such person as is indicated in the Order in that behalf.

For the sake of simplicity in the following paraphrase of the Act, I shall assume the fugitive to have escaped from the United Kingdom and to have been arrested in a colony; so that in connexion with the return, the only reference will be to the Governor, instead of using the cumbrous phrase, "the Secretary of

State or the Governor, as the case may be." The Court referred to will, unless otherwise specified, always be a Superior Court of the colony in which the fugitive is arrested.

Chap. VIII.

The normal procedure for arresting the fugitive is by "endorsed warrant." A warrant being issued in the part of the dominions where the offence was committed, it may, by s. 3, be endorsed in that part "in or on the way to which the fugitive is or is suspected to be." It thereupon becomes a sufficient authority for the apprehension of the fugitive in the part of the dominions in which it has been endorsed for the purposes of his return.

Arrest by
endorsed
warrant.

The authorities who have power to endorse the warrant are—

Endorsing
authorities.

- (i) A Judge of a Superior Court;
- (ii) In the United Kingdom, a Secretary of State, and one of the magistrates of the metropolitan Police Court in Bow Street;
- (iii) In a colony, the Governor; and generally,
- (iv) all persons who are authorised to exercise the powers of the Secretary of State or of a Governor, in any country or in any special part of the dominions.

Further, by s. 39, the term "Superior Court" means,—

- (a) in England, the Court of Appeal and High Court of Justice;
- (b) in Scotland, the High Court of Justiciary;
- (c) in Ireland, the Court of Appeal and the High Court of Justice at Dublin;
- (d) in a colony, any Court having in the colony the like criminal jurisdiction to that which is vested in the High Court of Justice in England; or such Court or Judge as may be determined by any Act or ordinance in the colony. The special power to determine such Court or Judge is vested in the Legislature of any colony by s. 32 (2), which will be referred to in due course.
- (e) in Protectorates and countries under foreign jurisdiction, the Court or person indicated by the Order in Council.

The condition of endorsing is that the authority is satisfied that the warrant was issued by some person having lawful authority to issue the same, in the part of the dominions where the offence was committed.

But, as valuable time may be lost while the warrant is on its way to another colony to be endorsed, as in the case of extradition to foreign countries, a more speedy and effective procedure is necessary; and therefore s. 4 provides for the issue of a "provisional warrant" by a magistrate in the part of the dominions in which the Act is going to be put into operation. The

Provisional
warrant.

Chap. VIII.

conditions of the issue of this warrant are that there must be such information, and the circumstances must be such as would in the opinion of the magistrate "justify the issue of a warrant if the offence of which the fugitive is accused had been committed within his jurisdiction." Such warrant may thereupon "be backed and executed accordingly." This refers to the backing of warrants under s. 11 of the Indictable Offences Act, 1848, for the purpose of execution beyond the jurisdiction of the authority who issued it. It assumes that the principle of that Act is in force in all the colonies; but, unless this assumption is accurate, there is a little hiatus in the section, as provision should be made for including in the word "backing" the corresponding procedure in the colonies, in the same way as, in s. 39, there is a provision to the effect that the expression "offence punishable on indictment means, as regards British India, an offence punishable on a charge or otherwise." Possibly, as no difficulties seem to have arisen, the assumption is correct.

11 & 12 Vict.
c. 42.

Offence to be treated as an offence against law of colony applied to.

The words "if the offence had been committed within his jurisdiction" must be read in conjunction with the provisions of s. 9; the acts committed may not be an offence by the law of that part of the dominions in which the provisional warrant is issued, or may not be an offence to which Part I of the Act applies, it having been removed from the category of "returnable offences" by local legislation under s. 32 (1). Yet, in virtue of this section, it has to be treated as if the facts constitute an offence against the law of that part of the dominions.

Governor may discharge fugitive.

A report of the issue of the provisional warrant is to be sent to the Governor, who "may, if he think fit, discharge the person apprehended under such warrant." When the fugitive has been apprehended he is to be remanded from time to time, for such reasonable time not exceeding 7 days at any one time, as the magistrate may think requisite for the production of an endorsed warrant; requisite, that is to say, for the arrival of the original warrant from the part of the dominions where it was issued, with the request for its endorsement. There is nothing in the Act to indicate by whom the request may be made.

The hearing.

The prisoner when apprehended, is, by s. 5, to be brought before a magistrate, "who (subject to the provisions of this Act) shall hear the case in the same manner and have the same jurisdiction and powers, as near as may be (including the power to remand and admit to bail), as if the fugitive were charged with an offence committed within his jurisdiction." Then the endorsed

warrant being duly authenticated, if evidence is produced as, “according to the law ordinarily administered by the magistrate, raises a strong or probable presumption that the fugitive committed the offence,” and that the offence itself is one to which Part I of the Act applies, the magistrate is to commit the fugitive to prison to await his return, and send a certificate and report forthwith to the Governor. The fugitive is to be informed that he will not be surrendered until after the expiration of 15 days, and that he has a right to apply for a writ of *habeas corpus*, or other like process which may obtain in the colony in which he has been arrested. The meaning of the expression “other like process” has been explained on p. 180. Finally, this delay over, or the procedure before the Court having terminated adversely to the fugitive, the Governor, “may, if he thinks just,” issue a warrant for the fugitive to be returned to that part of the dominions from which he is a fugitive.

Chap. VIII.

Habeas corpus.

The warrant authorises the person to whom it is addressed to hold the prisoner in custody and convey him by sea or otherwise to the place indicated; and all prison officers, on the journey, are required to receive the prisoner and detain him for a reasonable time at the request of the person to whom the warrant is addressed, for the purpose of its proper execution, on payment or tender of a reasonable sum for expenses.

Conveyance of fugitive by sea.

If the fugitive, after committal to prison to await his return, is not conveyed away within one month, a Superior Court may order him to be discharged, notice of the application having been given to the Governor, unless sufficient cause is shewn to the contrary. Further, if the person so returned is not prosecuted within 6 months after his arrival, or is discharged, the Secretary of State in the United Kingdom, or the Governor in a Colony, may, on his request, “cause him to be sent back free of costs and with as little delay as possible to the part of the dominions in or on his way to which he was apprehended.”

Discharge if not conveyed out of colony in 1 month, or not prosecuted in 6 months.

A Superior Court has, by s. 10, a further power to protect the fugitive and prevent the procedure being abused. If it is made to appear that by reason of the trivial nature of the case, or by reason of the application for the return not being made in good faith in the interests of justice or otherwise, it would, having regard to the distance, to the facilities for communication, and to all the circumstances of the case, be unjust or too severe a punishment to return the fugitive either at all or until the expiration of a certain period, the Court may either

Order refused in trivial cases.

Chap. VIII.

discharge him either absolutely or on bail, or order that he shall not be returned until after the expiration of a certain period, or may make such other order as seems just.

Committing
authorities.

The jurisdiction to hear a case and commit a fugitive to prison to await his return, under Part I, is, by s. 30, exercisable,—

(i) in England, which includes the Channel Islands and the Isle of Man [s. 37], by a chief magistrate of the metropolitan Police Courts or one of the other magistrates of the metropolitan Police Court at Bow Street;

(ii) in Scotland, by the sheriff or sheriff substitute of the county of Edinburgh;

(iii) in Ireland, by one of the police magistrates of the Dublin metropolitan police district;

(iv) in a colony, by any Judge, justice of the peace, or other officer having the like jurisdiction as one of the magistrates of the metropolitan Police Court in Bow Street; or by such other Court, Judge, or magistrate as may be from time to time provided by an Act or ordinance passed by the Legislature of that colony.

(v) In Protectorates and countries under foreign jurisdiction, the Court or officer indicated by the Order in Council.

Presumably the colonial legislation referred to in (iv) is the same as that mentioned among the powers of Colonial Legislatures in s. 32 (2), in which case the legislation would have to be put in force by Order in Council. §

Further, if the fugitive is arrested and brought before a magistrate who has no jurisdiction under the Act, he has power to order him to be brought before a magistrate who has jurisdiction.

Arrest by
"backed
warrant" in
contiguous
groups of
colonies.

The second Part of the Act creates a still simpler means of apprehending fugitives, known as "Inter-colonial backing of warrants," which reduces the procedure to one of simply backing in one colony a warrant issued in another. Certain colonies are first arranged in groups, in which "by reason of their contiguity" the procedure can be effectively put in force. The groups are indicated by Order in Council, the formula often used in the preamble being that, by reason of the contiguity of the colonies specified and the frequent inter-communication among them, it will be conducive to the better administration of justice therein, if Part II of the Act be applied to them as a group.

§ In Messrs Byron and Chalmers book (p. 120) certain colonies are mentioned as having passed ordinances under s. 30; I have, however, been unable to trace the Orders in Council.

This Part of the Act is not limited in respect of the nature of the offence for which the original warrant was issued, and s. 9 does not apply to it. But power is reserved in the Order in Council applying it to any group of possessions, to except any offences from its application, which offences are to be determined by the Order. An example of the exercise of this power will be found in the case of the West Indian Possessions Order referred to later. The United Kingdom, together with the Channel Islands and the Isle of Man are, by s. 37, set out above, made one "part" of the dominions. The difference between a "part" and a "group" is that the warrant runs through the whole extent of the former, and requires no backing.

Chap. VIII.

Part II applies to all offences.

cf. p. 277.

The procedure is as follows. Where a warrant has been issued in one of the colonies of a group, for the apprehension of a person accused of an offence punishable by law in that colony, and such person is or is suspected of being in or on his way to another colony of the group, a magistrate in this latter colony, if he is satisfied that it was issued by a person having lawful authority to issue it, may endorse the warrant; the "backed warrant" is then sufficient authority to apprehend, within the jurisdiction of the endorsing magistrate, the person named in the warrant, and bring him before the endorsing magistrate or some other magistrate in the same colony. The term "backing" is only used in the marginal notes and sub-titles of the Act, the term "endorse" being used in the text; it is clearly borrowed from the Indictable Offences Act, 1848, the inter-colonial procedure being in some measure based upon the home practice for making warrants run in other jurisdictions than that of the issuing justice. The terms "endorsed warrant" and "backed warrant" are, however, very convenient for keeping distinct the practice under Part I and Part II of the Act.

Procedure to obtain "backing."

11 & 12 Vict. c. 42.

The peculiar feature of this procedure is that the hearing is dispensed with, and the fugitive is at once returned to the colony from which he is a fugitive for trial. Before making the order for return under s. 14, the magistrate has to be satisfied that the warrant is duly authenticated, as required by s. 29, and that it was issued by a person having lawful authority to issue it; further, he has to be satisfied on oath that the prisoner is the person named or otherwise described in the warrant. He then issues a warrant for his custody and conveyance to the colony in which the original warrant was issued, as in the case of proceedings under Part I. The local procedure of the Magistrate's

Fugitive returned without hearing.

Chap. VIII.

Court is applied by the 2nd paragraph of s. 14, which provides that so far as is requisite for the exercise of the powers under this section, the magistrate is to have "the same power, including the power to remand and admit to bail a prisoner, as he has in the case of a person apprehended under a warrant issued by him."

"Backing" of summons to witness.

A similar power is given, by s. 15, to "back" a summons for the attendance of a witness required to give evidence on behalf of the prosecutor or the defendant on a criminal charge. If the witness "is or is suspected of being in or on his way to" any other colony in the group, a summons may be issued in the same way as it would be issued if the witness were within the jurisdiction, and a magistrate in any other colony in the group may endorse the summons. On service and payment or tender of a reasonable amount for his expenses, the witness is required to obey the summons, (defined to include a *subpœna*, or other process for requiring the attendance of a witness), or in default is liable to be tried and punished either in the colony where it was issued, or in the colony where it was served, according to the law of the colony where he is tried. The place from which the witness is travelling would seem to be immaterial.

Provisional warrant under Part II.

A provisional warrant may also, by s. 16, be issued under of Part II, before the original warrant is backed, on such information and under such circumstances as would, in the opinion of the magistrate, "justify the issue of a warrant if the offence of which the person is accused were an offence punishable by the law" of the colony, and had been committed within his jurisdiction. The same expression occurs in this section as in s. 4— "and such warrant may be backed and executed accordingly." It probably has the same meaning as in s. 4, referring to local backing, and not to backing under the Act; for the provisional warrant is only issued in the colony in which the original warrant will subsequently be backed by endorsement, and cannot itself be backed by endorsement in another colony. The person arrested under a provisional warrant is entitled to be discharged if the original warrant is not produced and backed, "within such reasonable time as may under the circumstances seem requisite."

cf. p. 155.

Discharge of fugitive if not returned or prosecuted.

If the prisoner is not returned within one month after the date of the warrant ordering his return, he is, by s. 17, entitled, as under Part I, to be discharged. Both the order and the refusal to make an order are in this case subject to appeal to a Superior Court. The principles adopted under Part I, of sending back a

prisoner returned but not prosecuted for the offence within 6 months: and of refusing to return a prisoner where the offence is trivial, &c., are applied, by ss. 18 and 19 respectively, to the procedure under Part II. In the latter case the order may be made by a magistrate as well as by a Superior Court; and either the making or refusal to make an order by a magistrate is subject to appeal to a Superior Court.

Chap. VIII.

Trivial offences.

In the Appendix will be found the different groups into which the Empire has been divided for the purposes of Part II. They are—(a) the Commonwealth of Australia, and the Australian Colonies: (b) the West Indian Colonies; (c) India, Ceylon and the Straits Settlements; and (d) The Straits Settlements, Hong Kong and Labuan. There is no objection to the inclusion of the same colony in two groups. In the case of the Straits Settlements, it is manifestly conducive to justice that it should be included in the northern or Chinese group as well as in the western or Indian group. This double grouping will also be noticed in the places and territories under foreign jurisdiction in Africa.

Grouping of the Colonies.

cf. Appdx. p. 321.

In the case of the South African and West African territories, other than possessions, the preliminary process of applying the Act to them as if they were British possessions, was effected in the same Order in Council as the grouping of them with the contiguous colonies. Rhodesia in the first group, and the Colonial Protectorates in the second, were treated in this way.

There remain those territories in which the Act is applied in virtue of the Foreign Jurisdiction Act, s. 5; this is almost invariably done in the Order in Council regulating generally the exercise of the foreign jurisdiction. These will be found in the Appendix following the Act. For convenience of reference, the "Limits of the Order," that is, the area in which the Order applies, and therefore within which the Act applies, are given, and also the grouping for the purposes of Part II.

There are a few details in these Orders in Council which call for special notice.

The power given in s. 12, of limiting the offences to which Part II is to apply, has been exercised in the West Indian Possessions Order, which provides that Part II shall only apply to the offences to which Part I applies. Also,—

Example of limitation of Part II to certain offences.

that no summons or other process shall be endorsed in any of the said possessions requiring any person to attend as a witness in any other of the said possessions on a charge for

Chap. VIII.

any offence other than treason, treason-felony, murder or rape, unless it is shown to the satisfaction of the Judge, magistrate, or other officer endorsing such summons or process that such person can obey the summons or process without being absent from such first-mentioned possession for a period exceeding 14 days.

Provided also that no person shall be bound to obey any summons or process endorsed in pursuance of the said s. 15 in any of the said possessions, except on payment or tender not only of a reasonable sum for his expenses but also of a further reasonable sum as compensation for any loss which such person or his or her family would sustain by reason of his or her absence from his or her place of residence for the purpose of obeying such summons or process, and the amount to be so paid or tendered shall be determined in case of difference by the Judge, magistrate, or officer by whom the summons or process is endorsed.

Changes in
Foreign
Jurisdiction
Orders.

The following are typical changes introduced by the Orders in Council applying the Act, issued under the Foreign Jurisdiction Act. They are taken from the China and Corea Order of 1904, art. 88. The British Minister is substituted for the Governor or Government of the Colony; His Majesty's Supreme Court for China, for a Superior Court of a colony; and the Supreme Court and each Provincial (Consular) Court, for a magistrate. In the Protectorates, the Commissioner, or other chief administrative officer, is substituted for the British Minister.

The following provision, taken from the Zanzibar Order, dealing with the procedure in regard to *habeas corpus*, is to be found in some of the Orders.

Provision in
cases where
the Court has
no power to
issue writ of
habeas corpus.

(a) So much of ss. 4 and 5 of the said Act as relates to sending a report of the issue of a warrant, together with the information, or a copy thereof, or to the sending of a certificate of committal and report of a case, or to the information to be given by a magistrate to a fugitive, shall be excepted, and in lieu of such information, the person acting as the magistrate shall inform the fugitive that in the British possession or Protectorate to which he may be conveyed he has the right to apply for a writ of *habeas corpus* or other like process.

(b) So much of s. 6 of the said Act as requires the expiration of 15 days before the issue of a warrant shall be excepted.

(c) The British Agent shall not be bound to return a fugitive offender to a British possession unless satisfied that

the proceedings to obtain his return are taken with the consent of the Governor of that possession. Chap. VIII.

The following supplementary provisions connected with the return of fugitives and their trial, are contained in Parts III and IV of the Act.

By s. 24, every Court or magistrate in the part of the dominions in which a warrant is endorsed, is to have the same power of issuing a warrant to search for any property alleged to be stolen or to be otherwise unlawfully taken or obtained by the person accused of the offence, or otherwise to be the subject of such offence, as he would have "if the property had been stolen or otherwise unlawfully taken or obtained, or the offence had been committed wholly within the jurisdiction of such Court or magistrate." Search warrants.

Where a person is in legal custody in a colony, either under the Act or otherwise, and it is necessary to remove him in custody to another place in or belonging to the same colony, if he is removed by sea in a vessel belonging to His Majesty or to any of his subjects, he is, by s. 25, to be deemed to continue in legal custody until he reaches the place to which he is to be removed. The provisions of s. 28, with regard to escape, are to apply to the case of such removal. Removal by sea in one jurisdiction.

By s. 27, fugitives or witnesses returned under the Act, "may be sent either in any ship belonging to His Majesty or to any of his subjects." This formula is also used in s. 25, noticed above. It is not synonymous with "British ship," as defined in the Merchant Shipping Act, 1894, s. 1; for, as is pointed out in another work, a British vessel may be owned by a company registered in the United Kingdom, every shareholder of which may be a foreigner. Return to be by British ship. 57 & 58 Vict. c. 60. cf. Nationality, Pt. I, p. 170B.

For the purpose of conveyance, the authority signing the warrant for return of the fugitive may order the master of a ship, as above defined, bound to the part of the dominions to which the fugitive is to be returned, "to receive and afford a passage and subsistence during the voyage to such fugitive or prisoner, and to the person having him in custody, and to the witnesses." The master is, however, not bound to receive more than one fugitive for every 100 tons register, or more than one witness for every 50 tons register. The particulars are to be endorsed upon the agreement of the ship, in accordance with Board of Trade regulations. On the arrival of the ship, if the fugitive is not in Duty of master of ship.

Chap. VIII.

custody, the master is to give him into the custody of a constable. For breach of these provisions on payment or tender of a reasonable amount for expenses, the master is liable on summary conviction to a fine not exceeding £50; and the fine may be recovered in any part of the dominions, in the same way as a penalty of the same amount may be recovered under the Merchant Shipping Act, 1894. The sections of this Act which apply are, s. 680 (1) (b)—summary prosecution in manner provided by the Summary Jurisdiction Act; with appeal to Quarter Sessions (s. 682); and the proceedings are to be commenced within 6 months after the commission of the offence (s. 683).§

42 & 43 Vict.
c. 49.

Escape.

If a prisoner escape, by breach of prison or otherwise, out of the custody of a person acting under a warrant issued or endorsed under the Act, he may, by s. 28, be retaken in the same manner as a person accused of a crime against the law of that part of the dominions to which he escapes may be retaken upon an escape.

A person guilty of escaping or attempting to escape, or of aiding or attempting to aid a prisoner to escape, may be tried either in the part of the dominions to which, or the part from which, the prisoner is being removed, or the part in which the prisoner escapes, or in which he is found.

Depositions.

By s. 29, a magistrate may take depositions for the purposes of the Act in the absence of a person accused, in the same manner as he may take them if he were present and accused of the offence before him; and such depositions, as well as those taken in the ordinary way, and copies thereof, and official certificates of or judicial documents stating facts, may, if duly authenticated, be received in evidence in proceedings under the Act; but this provision is not to be construed to authorise the reception of such documents against a person upon his trial for an offence.

False evidence.

A person accused of the offence (under whatever name it is known) of swearing or making any false deposition, or of giving or fabricating any false evidence, for the purposes of the Act, may, by s. 22, be tried either in the part of the dominions in which such deposition or evidence is used, or in the part in which it was sworn, made, given, or fabricated, as the justice of the case may require.

Warrants, depositions, copies and certificates, may, also by s. 9, be authenticated for the purposes of the Act, if they are

§ It is doubtful whether s. 681 (2) applies; for the provision as to recovery as a civil debt under the Summary Jurisdiction Acts only refers to sums which may be recovered as a fine, "if recoverable before a Court of summary jurisdiction."

authenticated according to the law for the time being (as to Chap. VIII. which, *see* p. 128); or—

if they purport to be signed by or authenticated by the signature of a Judge, magistrate, or officer of the part of Her Majesty's dominions in which the same are issued, taken, or made, and are authenticated either by the oath of some witness, or by being sealed with the public seal of a British possession, or with the official seal of a Governor of a British possession, or of a Colonial Secretary, or of some secretary or minister administering a department of the Government of a British possession. Authentication of documents.

All Courts and magistrates are to take judicial notice of such seals, and the documents authenticated by them are to be admitted in evidence without further proof.

Power is given by s. 32 to any Colonial Legislature to pass laws modifying the Act in its working in the colony, in regard to the following matters:— Powers of Colonial Legislatures.

(i) for defining the offences committed in the colony to which the Act or any part of it is to apply;

(ii) for determining the Court, Judge, magistrate, officer, or person by whom, and the manner in which, any jurisdiction or power under the Act is to be exercised in the colony;

(iii) for payment of costs incurred in returning a fugitive [ss. 6, 14], or in sending back a returned fugitive [ss. 8, 18], or in any other matter in executing the Act; or

(iv) for in any manner carrying into effect the Act or any part of it in the colony.

Such laws, if they are thought necessary or proper for carrying into effect the objects of the Act, may be recognised and given effect to by Order in Council throughout the dominions and on the high seas, as if they were part of the Act. Orders in Council.

The same power as (i) exists under s. 12, in regard to limiting the offences to which Part I applies, and is exercisable by Order in Council. As suggested above, the powers referred to in s. 30(4), as to the committing authority [p. 282], and in s. 39 (d), as to the endorsing authority [p. 297], probably coincide with the power given in (ii).

With regard to Orders in Council made under the Act, the usual provisions are embodied in s. 31: that the Orders may be revoked and varied, and that they are to have the same effect, while in force, as if they were enacted in the Act. They are to be laid before Parliament as soon as may be, or if

Chap. VIII. Parliament is not in session, as soon as may be after the then next session.

Provisions as to trial in more than one part of the dominions.

The Act is applied, by s. 33, to a person who is accused of an offence which can, by reason of the nature of the offence, or of the place in which it was committed, or otherwise, be tried in more than one part of the dominions. A warrant for his apprehension may be issued in any part in which, if he happens to be there, he can be tried. The marginal note explains the meaning of the section. It refers to "offences at sea, or triable in several parts of the dominions." The two principal Acts under which there is general concurrent jurisdiction in all the Courts of the Empire over offences, are, the Offences at Sea Act, 1806, and the Murders Abroad Act, 1817. There are also many cases in which there is a special concurrent jurisdiction in two or more parts of the dominions; for example, under s. 10 of the Offences against the Person Act, 1861, which is reproduced in many of the colonial statute-books, where the death or stroke only happens in one part, and the murder is also partly committed in another part. The Act itself also creates a concurrent jurisdiction in certain special cases dealt with in ss. 20 and 21.

46 Geo. III, c. 54.
57 Geo. III, c. 53.

24 & 25 Vict.
c. 100.

In such cases the Act is to apply as if the offence had in fact been committed in the part in which the person happens to be; and he can be tried, and a warrant may be issued for his apprehension. The Act, and each Part of the Act, is then to apply as if the offence had been committed there; and he may be apprehended and returned under the Act, notwithstanding that he might be tried in the place where he was in fact apprehended. But discretion is given to the Secretary of State, or the Governor of a Colony, as the case may be, to order the trial to take place in the part of the dominions where he was apprehended, if he is satisfied that, having regard to the place where the witnesses for the prosecution and for the defence are to be found, and to all the circumstances of the case, it would be conducive to the interests of justice to do so.

Removal for trial to another colony.

A similar provision is made, by s. 35, where a person accused of an offence is in custody in some part of the dominions. A Superior Court, the Secretary of State, or the Governor, as the case may be, may, for the same reasons, order him to be removed to some other part in which he can be tried; and if he is acquitted or not prosecuted, he may be sent back free of costs as if he were a fugitive returned in pursuance of Part I.

The question of trial and punishment in cases where any

part of the Act provides for the place of trial of a person accused of an offence, is dealt with in s. 23. The offence for all purposes of and incidental to the apprehension, the trial, and punishment of the person, shall be deemed to have been committed in any place in which the person accused of the offence can be tried for it. The person may be punished in accordance with the Courts (Colonial) Jurisdiction Act, 1874.

Chap. VIII.
Trial in colony with no inherent jurisdiction.

37 & 38 Vict.
c. 37.

This Act provides that where in virtue of any Act a person is tried in a colony for an offence committed on the high seas or elsewhere out of the territorial limits of the colony and of the local jurisdiction of the Court which tries him,

such person shall, upon conviction, be liable to such punishment as might have been inflicted upon him if the crime or offence had been committed within the limits of such colony and of the local jurisdiction of the Court, and to no other, anything in any Act to the contrary notwithstanding.

But if the crime is a crime which is not punishable in that colony, then the person shall be liable to such punishment, other than capital punishment, "as shall seem to the Court most nearly to correspond to the punishment to which such person would have been liable in case such crime or offence had been tried in England."

Where a person is convicted in any part of the dominions for an offence committed in the dominions or elsewhere, and is unlawfully at large before the expiration of his sentence, each Part of the Act is, by s. 34, to apply, so far as is consistent with the tenor thereof, as it applies to a person accused of the like offence, in the part of the dominions in which he was convicted.

Convicted persons.

Two very special sections of the Act extend the ordinary territorial jurisdiction of the Colonial Courts to offences committed on their borders. The first is simple; it provides that—

Offences committed on boundary of two colonies.

Where two British possessions adjoin, a person accused of an offence committed on, or within the distance of 500 yards from, the common boundary of such possessions, may be apprehended, tried, and punished in either of such possessions.

The second is more complicated, and is described in the marginal note, as dealing with "offences committed on a journey between two British possessions."

Offences committed on journey between two colonies.

Where an offence is committed on any person or in respect of any property in or upon any carriage, cart, or vehicle whatsoever employed in a journey, or on board any vessel whatsoever employed in a navigable river, lake, canal, or inland navigation, the person accused of such offence may be

Chap. VIII.

tried in any British possession through a part of which such carriage, cart, vehicle, or vessel passed in the course of the journey or voyage during which the offence was committed;

and where the side, bank, centre, or other part of the road, river, lake, canal, or inland navigation along which the carriage, cart, vehicle, or vessel passed in the course of such journey or voyage is the boundary of any British possession, a person may be tried for such offence in any British possession of which it is boundary;

provided that nothing in this section shall authorise the trial for such offence of a person who is not a British subject, where it is not shewn that the offence was committed in a British possession.

No question of extra-territorial jurisdiction arises under s. 20, and therefore a foreigner comes within its provisions. But when the offence falls within s. 21, and the journey is prosecuted through territory or on a river which is not in a British possession, then the ordinary rule which governs extra-territorial jurisdiction is applied, and it is extended to British subjects only.

cf. *Exterritoriality*.
pp. 102, 103.

The practical application of these two sections to Hong Kong and China is discussed in my work on *Exterritoriality*.

Offences
committed prior
to application
of Act.

By s. 38, the Act was applied to offences committed before its commencement. It also applies, in the case of Part II, to offences committed before the application of that Part to a British possession or to the offence.

Decisions under
Fugitive
Offenders Act.

I have hesitated to make many comments on this Act in the absence of judicial decision. But the points at which it varies from the Extradition Act cannot fail to attract attention; two of these may be noticed--the power of the Secretary of State to set aside the provisional warrant issued by the magistrate is stated more absolutely in s. 4, as also the right to refuse to return the fugitive in s. 6 if he thinks just. The following are the most important decisions under the Act.

R. v. Spilsbury.
1898, 1 Q.B. 615.

R. v. Spilsbury.

The defendant was a British subject charged with a riotous assault upon the soldiers of the Emperor of Morocco, and of firing on his ship, the *Hassanie*. The defendant, under the Morocco Order in Council, was subject to the jurisdiction of the Consular Court at Tangier at the time the offence was committed; he was arrested in London; the Act is applied to that Court by the Order, and the magistrate committed him to prison to await his return to Morocco. A rule *nisi* for a *habeas*

corpus was granted. The main point relied on was that the facts proved before the magistrate raised "no strong or probable presumption" that the defendant had committed the offence. Lord Russell, C.J., according to the report, made a summary reference to the leading points in the evidence; and while refraining from elaborating the case, came to the opinion that on the whole of the materials which were before the magistrate there was sufficient evidence to warrant the conclusion to which he had come, and the writ was therefore refused.

Chap. VIII.

The question which arises first is, why this point was considered at all, and why the principle, the gradual evolution of which culminated in *ex parte Siletti*, was not acted on, that the Court on *habeas corpus* will not review the magistrate's decision. The effect of the difference in the words of s. 5 of the Fugitive Offenders Act, and s. 10 of the Extradition Act will be considered presently, when we have examined the decision in *ex parte Percival*; but so far as this case goes it is clear that it does not coincide with the extradition cases, for the Court went through the facts, and came to the opinion that there was sufficient evidence to justify the magistrate's decision; in other words, the Court entertained an appeal from the magistrate, and if their opinion had been the other way, would on this ground have released the prisoner.

Review of the evidence by the Court.
exp. Siletti.
87 L.T. 332.
cf. ante, p. 187.

exp. Percival.
1907, 1 K.B. 696.

Then came the question of bail. The Act, in s. 5, gives the magistrate "the same jurisdiction and powers, as near as may be, (including the power to remand and admit to bail), as if the fugitive were charged with an offence committed within his jurisdiction." It was assumed throughout that the question of bail after committal did not fall within this provision, the words "remand and commit to bail" being read conjointly; bail is therefore limited to remands. So far as the provision in the Act is concerned, the explanation of it may possibly be, that after issuing the committal warrant for return the magistrate is, as in extradition cases, *functus officio* (Wright, J., *ex parte Otto*), and therefore he was not given a jurisdiction which could not be supervised by a magistrate; for neither he nor any other magistrate would properly have the power to estreat the recognizances. But the Court did not discuss the power of the magistrate to admit to bail after committal, but its own power to do so at common law. Lord Russell, C.J., came to the conclusion that the onus of shewing that the power to admit to bail exists is not cast on the defendant, for the Court has, indepen-

Bail after committal.

cf. p. 94.

exp. Otto.
1891, 1 Q.B. 420.
cf. ante, p. 271.

Chap. VIII. dently of statute, jurisdiction to admit to bail; and the question
 * 2nd. ed. p. 97. therefore was whether the Act took away the power. The
 following statement from Chitty's Criminal Law* was quoted
 with approval;—

Power of King's
 Bench to admit
 to bail.

The Court of King's Bench, or any Judge thereof in vacation, not being restrained or affected by the statute 3 Edw. I, c. 15,† in the plenitude of that power which they enjoy at common law, may, in their discretion, admit persons to bail in all cases whatsoever, though committed by justices of the peace or others, for crimes in which inferior jurisdictions would not venture to interfere, and the only exception to their discretionary authority is, where the commitment is for a contempt, or in execution. Thus they may bail for high treason, murder, manslaughter, forgery, rapes, horse-stealing, libels, and for all felonies and offences whatever.

Reasons in
 favour of
 jurisdiction.

It was held that the Act did not circumscribe this power either by express words or by implication; for otherwise this result would follow—that the magistrate could admit to bail pending the hearing; that the Court at the place to which the prisoner is returned could admit him to bail pending the result of the trial; but there would be no jurisdiction during the period between the making of the order for his return and his return. The grave objection to bail, that the prisoner might go away and decline to surrender, and so defeat the intention of the Act, was considered, but Lord Russell thought the answer sufficient “that the proceedings might be commenced *de novo*, and a fresh warrant issued, on which the accused could be arrested.” For these reasons the conclusion was come to, “that the provisions of the statute are consistent with the recognition of the power of this Court to admit to bail in such cases as the present. This inherent power to admit to bail is historic, and has long been exercised by the Court, and if the Legislature had meant to curtail or circumscribe this well-known power, their intention would have been carried out by express enactment.” Nevertheless it was agreed that the power ought to be exercised with extreme care and caution in the case of fugitive offenders; and, taking the circumstances of the case into account, “and bearing in mind that it rests largely with the defendant how long he is detained before he is sent abroad, and that, when he is sent abroad, he can apply there to be admitted to bail,” and further, that “it is within the power of the Secretary of State straightway to order that the defendant be returned, and if the defendant

† *rep.* by the Sheriffs Act, 1887: 50 & 51 Vict. c. 55, s. 39.

wishes this to be done, and applies, no doubt it will be done," bail was refused.

Wright, J., was of the same opinion; but added, "that cases under the Fugitive Offenders Act will not in all instances apply as precedents in cases under the Extradition Acts. Under the Fugitive Offenders Act it is generally a question between different parts of Her Majesty's dominions, but under the Extradition Acts the jurisdiction depends in all cases on treaties with foreign countries."

Kennedy, J., concurred, but not without doubt, looking at some of the questions which may arise as to procedure in the working of the Acts; but entirely concurred "in the view that the burden of proof lies upon the party who asserts that the ancient and important jurisdiction of this Court to admit to bail is taken away by the statute."

The decision is, with great respect, open to some criticism. The effect of it is that the magistrate has no jurisdiction to grant bail after committal, but that the King's Bench Division has; therefore an independent application must be made to that Court, or to a Judge in vacation. The reference to the prisoner having it in his own power to expedite his return is hardly warranted by the Act; for, by s. 6, it is the duty of the Secretary of State, "if he thinks just," to order the return; and if this order is not made within one month the prisoner is entitled to apply to the Court to be discharged.

Reasons why bail should not be granted.

But the point of greatest importance, to which I have already referred in connexion with extradition, is that the common law of bail, as it is expounded by the authorities, is wholly inapplicable to cases of fugitive offenders, and there is in this respect no difference between extradition to foreign countries or to other parts of the Empire. The law of bail is always expressed in terms of the criminal law; either, as in *re Frost*, that it must be granted in the case of misdemeanors, but is discretionary in the case of felonies; or, as in *Chitty*, with regard to the power of the King's Bench, that it exists in all cases of crimes. It is submitted that the real question is whether when the Legislature created a new procedure for the carrying out of an international obligation, criminal it is true, but which has no direct connexion with English criminal law, it was intended that that part of the criminal procedure which relates to bail should be applicable. If it had been intended a definite statement to that effect might reasonably have been looked for in the Act. And what is true

Bail inapplicable to fugitive offenders.

re Frost,
4 T.L.R. 757.
cf. ante, p. 95.

Chap. VIII.

with regard to extradition is also true with regard to the surrender to the colonies; for the English Courts have no greater power over criminals who have committed offences in the colonies than they have over those who have committed offences in foreign countries. I venture to think that the fact that the surrender of fugitive offenders lies altogether outside of the provisions of the common law was lost sight of; for indeed in one part of the judgment of the learned Lord Chief Justice, he said,—“It is suggested that, the charge in the present case being a charge of misdemeanor, if the power to admit to bail exists at all, the defendant would have an absolute right to bail;” and the difficulty was treated as a substantial one. There was no charge of misdemeanor; it was accidental that under the Morocco Order in Council the offence would have been a misdemeanor: but our law of felony and misdemeanor does not exist in all the colonies, and for this reason alone the argument is unsatisfactory. Apart from legal considerations, the question seems to reduce itself to one point, that bail may lead to further escape; and this shows how inapplicable it is, whether in a case of a “surrender” to a foreign country, or a “return” to a colony. If, as Wright, J., seems to have suggested, the agreement with a foreign country were the reason for refusing bail, then in the case of unilateral extradition in Cyprus or Canada, bail would be granted without difficulty. I venture to suggest that, whatever may be said on the question of bail during remand, to grant it after the committal for surrender or return, is to defeat the intention of the Acts, and may lead to a further and more effectual escape, which no subsequent proceedings could rectify.

Bail may lead
to further escape.

cf. p. 190.

Banishment
in colonies.

An analogous question has recently come within the author's experience, to which the above considerations apply. In Hong Kong the Government has an absolute power of banishment of aliens, and may commit the person banished to the custody of the police pending his departure. A rule *nisi* had been obtained in such a case, and the validity of the procedure adopted was to be contested on *habeas corpus*. The person banished applied to be admitted to bail. The Court held that in the face of the statute they had no power to grant it, for it would be defeating the intention of the Legislature, and might deprive the Government of the means of effectively enforcing its order. But the argument in this case would seem to shew that the Court had the power, for it was not expressly taken away by the ordinance.

The same Court adopted the grounds of their judgment in *R. v. Spilsbury* in a similar case, *R. v. Hoic*, which came before them on the same day. The application for bail was refused because the prisoner was to sail in a few days; and also because the Cape Government had opposed the granting of bail, and the Court thought it right to give weight to its views.

Chap. VIII.

R. v. Hoic,
14 T.L.R. 578.

One further point was decided in *R. v. Spilsbury*, which is important where the Fugitive Offenders Act is applied to the Consular Courts. It is not uncommon to give concurrent jurisdiction in certain cases to the Courts of a neighbouring colony. Such a jurisdiction had been given to the Court of Gibraltar with the Consular Court of Tangier; and there being sufficient reasons for so doing, among which was the fact that a jury could not be guaranteed at Tangier, the Court ordered the trial to take place in Gibraltar. When the case came on, some doubts were expressed as to whether the procedure of the Order in Council ought not to be followed, a trial with assessors, and not the ordinary procedure of the Courts of the colony. The Privy Council held that the doubts were unfounded, and that the trial should be held in Gibraltar according to its ordinary procedure. A trial by jury was thus ensured (*Spilsbury v. R.*)

R. v. Spilsbury,
1898, 2 Q.B. 615.When trial
ordered in
Colonial Court,
its own
procedure is to
be followed.*Spilsbury v. R.*
1899, A.C. 392.*Ex parte Percival.**exp. Percival*,
1907, 1 K.B. 696.

In this case a latent difficulty in the working of the Act was discovered. According to the head-note of the report it was decided, that "in order that the magistrate may have jurisdiction to commit a fugitive offender for return to a colony, it is necessary that there should be evidence before him that the offender has committed an offence punishable according to the law of the colony in which it is alleged to have been committed by imprisonment with hard labour for a term of 12 months or more." This seems, at first sight, to be an obvious proposition—that the magistrate, before he comes to the conclusion, under s. 5, that the evidence produced raises a strong or probable presumption that the offence was committed, and so that he is justified in committing the fugitive for return, must be satisfied that the offence is one to which the Act applies, that is to say, is an offence which comes within the definition of s. 9. But some points arise of considerable complexity.

Offence within
s. 9 to be proved.

In the first place, the Fugitive Offenders Act differs in one point of detail from the Extradition Act; there is no express power given to the magistrate, as in s. 9 of that Act, to receive

Chap. VIII.

evidence that the offence is not an extradition crime. If there were any doubt whether he may do so under the Fugitive Offenders Act, this decision settles it.

Evidence must support charge in colonial warrant.

Secondly, the offence charged was larceny in Victoria. The rule for the *habeas corpus* was granted on the ground, *inter alia*, that there was no evidence to support the charge of larceny in the Victorian warrant. The following fact, material to this point, appeared from the depositions taken at Melbourne and at Bow Street—there was a deposition of the senior constable of police attached to the criminal investigation branch, Melbourne, who stated that “by the Crimes Act, 1890, No. 1079, an Act now in force in the State of Victoria, the crime of larceny is punishable by imprisonment with hard labour for any term not exceeding 5 years.” It was admitted by the Crown that there was no expert evidence that the facts of this particular case constituted larceny by Victorian law; but although there seems to have been some doubt whether the case fell within the Act of 1890, it was contended that it did fall within that Act as amended by an Act of 1896, and that the Court was bound to look at this amending Act, if there was any evidence that the offence amounted to larceny under the Act of 1890, although the case did not fall within any particular section of it. On behalf of the prisoner it was contended that this absence of skilled evidence was fatal; that the Court could not look at a colonial statute, and that even if it could, the mere production of the statute would not put the Court into possession of the construction placed upon it by the Courts in the colony, and therefore expert evidence was necessary to explain it, for otherwise the English Courts might place an entirely different construction upon it to that of the Colonial Courts; therefore there was no evidence that what the prisoner did amounted to larceny within the meaning of the statute. The Court agreed, and the prisoner was discharged.

Expert evidence of colonial law.

Doubts were, however, expressed as to whether there was not power to send the case back to the magistrate in order that the necessary evidence should be supplied; but in view of the circumstances of this case the Court decided not to do so, indicating, however, that it was not to be taken as a precedent.

Copies of colonial laws now receivable.

7 *Edw. VII*,
c. 16.

The fundamental difficulty was got rid of, within a few months after the decision, by the Evidence (Colonial Statutes) Act, 1907, which allows copies of colonial ordinances to be received in evidence by all Courts in the United Kingdom, if they purport to be printed by the Government Printer of the Colony.

But this is only part of the difficulty, for there is still the question of the interpretation of the colonial law. Lord Alverstone, C.J., declined to express an opinion as to what would or would not be sufficient evidence. It is possible that when the law in question is that of a colony where English law is in force, when there are reported decisions of its Courts, and English decisions are accepted as precedents, the Court would rest content with that. Yet if the prisoner were a fugitive from a colony where foreign law obtains, for example, Mauritius, skilled evidence as to its interpretation would still be necessary.

We come here to a difference in procedure, between the Fugitive Offenders Act and the Extradition Act. The highly artificial procedure of extradition requires the magistrate, before committing a fugitive, to decide whether the facts of the alleged offence committed abroad would constitute an offence by English law supposing them to have been committed in England. In order to do this he is invested with the same power and jurisdiction as he would have if he were actually hearing such an English case. And he comes to his decision on this point in the exercise of his judicial discretion, from which there is no appeal; and although *habeas corpus* may be resorted to, it is not by way of appeal, but only to shew, as it has been called, absence of jurisdiction. But under the Fugitive Offenders Act his duty is differently expressed. The artificial standard of the Extradition Act has disappeared; the magistrate is to receive evidence that the alleged offence is punishable, that is, is in fact an offence, as defined by s 9, by the law of the place where it was committed; *locus regit actum* is the sole basis of extradition in the Empire. In order to make this point clear it will be convenient to set out the provisions of the two Acts side by side:—

Difference in procedure under the two Acts.

cf. p. 157.

and such evidence is produced as (subject to the provisions of this Act) would, according to the law of England,

justify the committal for trial of the prisoner if the crime of which he is accused had been committed in England, . . .

and such evidence is produced as (subject to the provisions of this Act) according to the law ordinarily administered by the magistrate,

raises a strong or probable presumption that the fugitive committed the offence mentioned in the warrant . . .

Extradition Act, s. 10, and Fugitive Offenders Act, s. 5, compared.

Chap. VIII.

There are two distinct points involved in these provisions; first, the application to the hearing before the magistrate of the *lex fori*; secondly, the application of a certain law to the facts proved before him.

The "law of committal" applicable.

As to the first point, the magistrate, in coming to a decision whether he will commit or discharge the prisoner is to act on the "law of committal" with which he is familiar. Under the section of the Extradition Act, the evidence is to be such as "would according to the law of England, justify the committal"; in the section of the Fugitive Offenders Act, the words are "according to the law ordinarily administered by the magistrate." In the application of the former Act to the colonies the English law of committal is to be universally adopted; in the application of the latter Act the law of committal of the colony is to be adopted, subject however to a special criterion of guilt, that there must be a "strong or probable presumption" in favour of it. But this is one of the criteria of the English law of committal, whereas in the section of the Extradition Act, the whole law of committal is included, and the other criterion of s. 25 of the Indictable Offences Act, 1848, is incorporated, that the magistrate is of opinion that the evidence "is sufficient to put the accused party upon his trial."

The criteria for committal.

11 & 12 Vict.
c. 42.

cf. p. 99.

Commission of crime in colonial warrant to be proved.

But secondly, the words of the Extradition Act, as I have pointed out, carry also this meaning, that the evidence of the facts, imagined to have been committed in England, must justify committal by the law of England; that is to say, they incorporate the fundamental principle of extradition, the reference of the case to the standard of English criminal law. But in the Fugitive Offenders Act, the evidence must substantiate the fact "that the fugitive committed the offence mentioned in the warrant", that is to say, committed the offence by the law of colony where it was committed.

cf. p. 150.

Powers of Court to review magistrate's decision.

Now, as to the first point, it is possible that the subtle distinction to which I have before alluded, between the two criteria for committal by English law, has been deliberately taken advantage of in drafting this section of the Fugitive Offenders Act, and that by referring only to the criterion of "strong or probable presumption," the case has ceased to be one of judicial discretion. I can only suggest this as the reason why on *habeas corpus*; the principle of the extradition cases was not acted on in *R. v. Spilsbury*, and the evidence before the magistrate was reviewed as on an appeal. The Court may, it would seem, say

cf. p. 293.

whether the presumption was sound or not; and indeed it is somewhat difficult to fit on the "jurisdiction" theory to this criterion. Chap. VIII.
cf. p. 157.

And on the second point, the magistrate is not called on to exercise any judicial discretion; he has to decide a question of law, whether the facts proved before him shew a case within the law of the colony where they were committed. He has of course to do the same thing in an extradition case, for he has to say whether the facts proved to have occurred abroad establish an offence by English law; and if he has made a mistake in this it certainly can be corrected on *habeas corpus*. The Court will not enquire whether there is sufficient evidence to justify the committal for the crime charged; (*re Galwey*); but it will enquire, the occasion arising, whether the facts given in evidence constitute the crime charged in law. This was in fact done in *re Arton (No. 2)*. Magistrate to
decide question
of law, subject
to review.

re Galwey,
1896, 1 Q.B. 230.
cf. *ante*, p. 125.

re Arton (No. 2),
1896, 1 Q.B. 509.
cf. *ante*, 121.

The question on *habeas corpus* under the Fugitive Offenders Act would therefore be, not that the arrest is illegal because the warrant was issued without jurisdiction, but that it was illegal because it was issued wrongfully on the interpretation of the colonial law, which the Act leaves to the decision of the magistrate. Therefore in this case an examination into the law of the place where the alleged offence was committed is inevitable.

If this chain of argument is sound, it does, I venture to think, strengthen the argument put forward in connexion with the case of *re Arton (No. 2)*, that in extradition cases an examination into the law of the foreign country is not permissible.

This question seems to have been considered in 1904, in *R. v. Vyner*. According to the report in the "Justice of the Peace," the Court left the question open whether they could consider the question that the evidence before the magistrate did not shew a strong or probable presumption that the offence was committed. The rule seems to have been discharged on the ground that the offence was not trivial, nor the proceedings oppressive, and therefore the Court declined to exercise the power of refusing to return the prisoner under s. 10. *R. v. Vyner*,
68 J.P. 142.

R. v. Cohen.

This case decides that the rule in extradition that the trial of a person surrendered must be limited to the offence for which he was surrendered, does not apply to the case of a fugitive returned under the Fugitive Offenders Act. An earlier case, *R. v. Philips*, *R. v. Cohen*,
17 J.P. 190.

R. v. Philips,
1 F. & F. 105.

Chap. VIII.

Prisoner after return may be tried for other offences.

R. v. Cohen.
71 J.P. 190.

cf. p. 171.

U. S. v. Rauscher.
12 Davis [U.S.] 407.
cf. ante, p. 62.

which was tried on circuit by Erle, J., in 1858, seems to have been treated as an authority. The prisoner was indicted for burglary; he had been arrested on that charge in Canada, and returned under the old Act of 1843. The Grand Jury ignored the bill, but found one for an assault, on which the prisoner was arraigned. The prisoner's counsel objected that he could not be tried as he had not been arrested on that charge; and the objection was overruled. The report is meagre, and the point does not appear to have been taken under the Act. In *R. v. Cohen*, the prisoner was returned from the Cape on a charge of obtaining goods by false pretences; he was indicted for other offences, and his counsel contended that he could only be tried for the offence for which he was returned; the learned Commissioner overruled the objection. This raises questions which have been much discussed in the earlier chapters of this book; and presumably the decision is sound, because there is no provision in the Fugitive Offenders Act corresponding to s. 19 of the Extradition Act. The prisoner being in this country is amenable to the law for any offence committed here; and the Act has made no provision in his favour. It is true that the reasoning of the American Courts in *U.S. v. Rauscher*, has met with approval in the English Courts; but it was undoubtedly based on the fact that extradition depends on a voluntary abandonment of the right of protection, and that therefore the resulting trial should be limited to the cause of that abandonment. This further distinction between extradition and the return of fugitives from one part of the Empire to another must therefore be noted; that the former is voluntary, while the latter is in obedience to imperial legislation. It is possible that this may lead to other variations in the decisions under the two Acts.

APPENDIX.



I.

THE EXTRADITION ACTS.

	PAGE
EXTRADITION ACT, 1870—33 & 34 Vict. c. 52 - - - - -	5
EXTRADITION ACT, 1873—36 & 37 Vict. c. 60 - - - - -	20
EXTRADITION ACT, 1895—58 & 59 Vict, c. 33 - - - - -	22
EXTRADITION ACT, 1906—6 Edw. VII, c. 15 - - - - -	23

II.

THE EXTRADITION TREATIES.

ARGENTINE REPUBLIC, 1889 - - - - -	25
AUSTRIA HUNGARY, 1873 - - - - -	33
Declaration, 1901 - - - - -	38
BELGIUM, 1901 - - - - -	40
Supplementary Convention, 1907 - - - - -	49
BOLIVIA, 1892 - - - - -	50
BRAZIL, 1872 - - - - -	57
Protocol, 1872 - - - - -	62
CHILE, 1897 - - - - -	62
COLOMBIA, 1888 - - - - -	69
CUBA, 1904 - - - - -	76
DENMARK, 1873 - - - - -	82
ECUADOR, 1880 - - - - -	89
FRANCE, 1876 - - - - -	96
Supplementary Convention, 1896 - - - - -	105
GERMANY, 1872 - - - - -	106
German Dependencies, Supplementary Treaty, 1894- - - - -	111
GUATEMALA, 1885 - - - - -	113
HAYTI, 1874 - - - - -	119
ITALY, 1873 - - - - -	124

	PAGE
LIBERIA, 1892 - - - - -	130
LUXEMBURG, 1880 - - - - -	135
MEXICO, 1886 - - - - -	141
MONACO, 1891 - - - - -	148
NETHERLANDS, 1891 - - - - -	156
NICARAGUA, 1905 - - - - -	164
NORWAY, 1873,—continued, 1907 - - - - -	170
PANAMA, 1906 - - - - -	171
PERU, 1904 - - - - -	177
PORTUGAL, 1892 - - - - -	183
ROUMANIA, 1893 - - - - -	190
Protocol, 1893 - - - - -	192
Protocol, 1894 - - - - -	196
RUSSIA, 1886 - - - - -	197
SALVADOR, 1881 - - - - -	203
SAN MARINO, 1899 - - - - -	210
SERVIA, 1900 - - - - -	217
SPAIN, 1878 - - - - -	223
Supplementary Declaration, 1889 - - - - -	231
SWEDEN, 1873,—continued, 1907 - - - - -	231
Supplementary Agreement, 1907 - - - - -	233
SWITZERLAND, 1880 - - - - -	237
Supplementary Convention, 1904 - - - - -	245
UNITED STATES OF AMERICA,	
Ashburton Treaty, 1842, arts. X and XI, - - - - -	246
Convention, 1889 - - - - -	247
Supplementary Convention, 1900 - - - - -	250
Supplementary Convention, 1905 - - - - -	251
URUGUAY, 1884 - - - - -	251
Protocol, 1891 - - - - -	259
<i>SUPPLEMENT.</i>	
SIAM, 1883 - - - - -	260
TONGA, 1879 - - - - -	261
Protocol, 1882 - - - - -	261
TUNIS, 1889 - - - - -	262

III.

SPECIAL EXTRADITION LEGISLATION.

This part of the Appendix contains some of the most important legislation passed in different parts of the Empire with regard to Extradition, which possesses peculiar features, and which differs essentially from the legislation of the United Kingdom.

CANADA.	PAGE
Revised Statutes, c. 142	263
Order in Council suspending the Extradition Acts in Canada	273
Act of 1889, relating to Foreign States where no arrangement exists -	274
[see slip facing p. 263	
CYPRUS.	
Extradition Order in Council, 1881	276
Amending Order in Council, 1895	286
Amending Order in Council (No. 2), 1895	287
HONG KONG.	
Ordinance relating to the Extradition of Chinese Criminals, 1889	287
Ordinance providing for the administration of "The Extradition Acts 1870 and 1873," 1875	294
Order in Council directing that the Ordinance of 1875 shall have effect as if it were part of the Imperial Act, 1877	295
Macao Extradition Ordinance, 1881, s. 7	296
STRAITS SETTLEMENTS.	
Extradition Order in Council, 1889, (amended by Order in Council, 1901,) for surrender to Foreign States in the case of which the Extradition Act, 1870, does not apply -	298

IV.

FUGITIVE OFFENDERS WITHIN THE BRITISH DOMINIONS.

THE FUGITIVE OFFENDERS ACT, 1881,—44 & 45 Vict. c. 69	306
Countries and Territories in which the Fugitive Offenders Act is applied in virtue of the Foreign Jurisdiction Act	321
Groups of Colonies and Places under British Jurisdiction for the purposes of Part II of the Fugitive Offenders Act, created by Order in Council	326

APPENDIX.

I.

THE EXTRADITION ACTS.

33 & 34 VICT. c. 52.

An Act for amending the Law relating to the Extradition of Criminals. [9th August, 1870.]

WHEREAS it is expedient to amend the law relating to the surrender to foreign States of persons accused or convicted of the commission of certain crimes within the jurisdiction of such States, and to the trial of criminals surrendered by foreign States to this country: Be it enacted*.

Preliminary.

1. This Act may be cited as "The Extradition Act, 1870."
 2. Where an arrangement has been made with any foreign State with respect to the surrender to such State of any fugitive criminals, Her Majesty may, by Order in Council, direct that this Act shall apply in the case of such foreign State.
Short title.
Where arrangement for surrender of criminals made, Order in Council to apply Act.
- Her Majesty may, by the same or any subsequent Order, limit the operation of the Order, and restrict the same to fugitive criminals who are in or suspected of being in the part of Her Majesty's dominions specified in the Order, and render the operation thereof subject to such conditions, exceptions, and qualifications as may be deemed expedient.
- Every such Order shall recite or embody the terms of the arrangement, and shall not remain in force for any longer period than the arrangement.
- Every such Order shall be laid before both Houses of Parliament within 6 weeks after it is made, or, if Parliament be not then sitting, within 6 weeks after the then next meeting of Parliament, and shall also be published in the London Gazette.

* Preamble, rep. S. L. R. (No. 2) Act, 1893.

3. The following restrictions shall be observed with respect to the surrender of fugitive criminals:

Restrictions on
surrender of
criminals.

- (1) A fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded is one of a political character, or if he prove to the satisfaction of the police magistrate or the Court before whom he is brought on *habeas corpus*, or to the Secretary of State, that the requisition for his surrender has in fact been made with a view to try or punish him for an offence of a political character:
- (2) A fugitive criminal shall not be surrendered to a foreign State unless provision is made by the law of that State, or by arrangement, that the fugitive criminal shall not, until he has been restored or had an opportunity of returning to Her Majesty's dominions, be detained or tried in the foreign State for any offence committed prior to his surrender other than the extradition crime proved by the facts on which the surrender is grounded:
- (3) A fugitive criminal who has been accused of some offence within English jurisdiction not being the offence for which his surrender is asked, or is undergoing sentence under any conviction in the United Kingdom, shall not be surrendered until after he has been discharged, whether by acquittal or on expiration of his sentence or otherwise:
- (4) A fugitive criminal shall not be surrendered until the expiration of 15 days from the date of his being committed to prison to await his surrender.

Provisions of
arrangement
for surrender.

4. An Order in Council for applying this Act in the case of any foreign State shall not be made unless the arrangement—

- (1) provides for the determination of it by either party to it after the expiration of a notice not exceeding one year; and,
- (2) is in conformity with the provisions of this Act, and in particular with the restrictions on the surrender of fugitive criminals contained in this Act.

Publication and
effect of Order.

5. When an Order applying this Act in the case of any foreign state has been published in the London Gazette, this Act (after the date specified in the Order, or if no date is specified, after the date of the publication), shall, so long as the Order remains in force, but subject to the limitations, restrictions, conditions, exceptions, and qualifications, if any, contained in the Order,

apply in the case of such foreign State. An Order in Council shall be conclusive evidence that the arrangement therein referred to complies with the requisitions of this Act, and that this Act applies in the case of the foreign State mentioned in the Order, and the validity of such Order shall not be questioned in any legal proceedings whatever.

6. Where this Act applies in the case of any foreign State, every fugitive criminal of that State who is in or suspected of being in any part of Her Majesty's dominions, or that part which is specified in the Order applying this Act (as the case may be), shall be liable to be apprehended and surrendered in manner provided by this Act, whether the crime in respect of which the surrender is sought was committed before or after the date of the Order, and whether there is or is not any concurrent jurisdiction in any Court of Her Majesty's dominions over that crime. [*explained*, to include crimes committed before the Act—36 & 37 Vict. c. 60, s. 2].

Liability of criminal to surrender.

7. A requisition for the surrender of a fugitive criminal of any foreign State, who is in or suspected of being in the United Kingdom, shall be made to a Secretary of State by some person recognised by the Secretary of State as a diplomatic representative of that foreign State. A Secretary of State may, by order under his hand and seal, signify to a police magistrate that such requisition has been made, and require him to issue his warrant for the apprehension of the fugitive criminal.

cf. p. 20.

Order of Secretary of State for issue of warrant in United Kingdom if crime is not of a political character.

If the Secretary of State is of opinion that the offence is one of a political character, he may, if he think fit, refuse to send any such order, and may also at any time order a fugitive criminal accused or convicted of such offence to be discharged from custody. [“diplomatic representative,” *explained*—36 & 37 Vict. c. 60, s. 7].

8. A warrant for the apprehension of a fugitive criminal, whether accused or convicted of crime, who is in or suspected of being in the United Kingdom, may be issued—

cf. p. 22.

Issue of warrant by police magistrate, justice, &c.

- (1) by a police magistrate on the receipt of the said order of the Secretary of State, and on such evidence as would in his opinion justify the issue of the warrant if the crime had been committed or the criminal convicted in England; and
- (2) by a police magistrate or any justice of the peace in any part of the United Kingdom, on such information or complaint and such evidence or after such proceedings as would in the opinion of the person issuing the warrant

justify the issue of a warrant if the crime had been committed or the criminal convicted in that part of the United Kingdom in which he exercises jurisdiction.

Any person issuing a warrant under this section without an order from a Secretary of State shall forthwith send a report of the fact of such issue, together with the evidence and information or complaint, or certified copies thereof, to a Secretary of State, who may if he think fit order the warrant to be cancelled, and the person who has been apprehended on the warrant to be discharged.

A fugitive criminal, when apprehended on a warrant issued without the order of a Secretary of State, shall be brought before some person having power to issue a warrant under this section, who shall by warrant order him to be brought and the prisoner shall accordingly be brought before a police magistrate.

A fugitive criminal apprehended on a warrant issued without the order of a Secretary of State shall be discharged by the police magistrate, unless the police magistrate, within such reasonable time as, with reference to the circumstances of the case, he may fix, receives from a Secretary of State an order signifying that a requisition has been made for the surrender of such criminal.

Hearing of case
and evidence
of political
character of
crime.

9. When a fugitive criminal is brought before the police magistrate, the police magistrate shall hear the case in the same manner, and have the same jurisdiction and powers, as near as may be, as if the prisoner were brought before him charged with an indictable offence committed in England.

The police magistrate shall receive any evidence which may be tendered to show that the crime of which the prisoner is accused or alleged to have been convicted is an offence of a political character or is not an extradition crime.

cf. p. 22.

Committal or
discharge of
prisoner.

[Hearing elsewhere than at Bow Street—58 & 59 Vict. c. 33].

10. In the case of a fugitive criminal accused of an extradition crime, if the foreign warrant authorising the arrest of such criminal is duly authenticated, and such evidence is produced as (subject to the provisions of this Act) would, according to the law of England, justify the committal for trial of the prisoner if the crime of which he is accused had been committed in England, the police magistrate shall commit him to prison, but otherwise shall order him to be discharged.

In the case of a fugitive criminal alleged to have been convicted of an extradition crime, if such evidence is produced as (subject to the provisions of this Act) would according to the law of England, prove that the prisoner was convicted of such

crime, the police magistrate shall commit him to prison, but otherwise shall order him to be discharged.

If he commits such criminal to prison, he shall commit him to the Middlesex House of Detention, or to some other prison in Middlesex, there to await the warrant of a Secretary of State for his surrender, and shall forthwith send to a Secretary of State a certificate of the committal, and such report upon the case as he may think fit. [*amend.* 58 & 59 Vict. c. 33].

11. If the police magistrate commits a fugitive criminal to prison, he shall inform such criminal that he will not be surrendered until after the expiration of 15 days, and that he has a right to apply for a writ of *habeas corpus*.

cf. p. 23.

Surrender of fugitive to foreign State by warrant of Secretary of State.

Upon the expiration of the said 15 days, or, if a writ of *habeas corpus* is issued, after the decision of the Court upon the return to the writ, as the case may be, or after such further period as may be allowed in either case by a Secretary of State, it shall be lawful for a Secretary of State, by warrant under his hand and seal, to order the fugitive criminal (if not delivered on the decision of the Court) to be surrendered to such person as may in his opinion be duly authorised to receive the fugitive criminal by the foreign State from which the requisition for the surrender proceeded, and such fugitive criminal shall be surrendered accordingly.

It shall be lawful for any person to whom such warrant is directed and for the person so authorised as aforesaid to receive, hold in custody, and convey within the jurisdiction of such foreign State the criminal mentioned in the warrant; and if the criminal escapes out of any custody to which he may be delivered on or in pursuance of such warrant, it shall be lawful to retake him in the same manner as any person accused of any crime against the laws of that part of Her Majesty's dominions to which he escapes may be retaken upon an escape.

12. If the fugitive criminal who has been committed to prison is not surrendered and conveyed out of the United Kingdom within 2 months after such committal, or, if a writ of *habeas corpus* is issued, after the decision of the Court upon the return to the writ, it shall be lawful for any Judge of one of Her Majesty's Superior Courts at Westminster, upon application made to him by or on behalf of the criminal, and upon proof that reasonable notice of the intention to make such application has been given to a Secretary of State, to order the criminal to be discharged out of custody, unless sufficient cause is shown to the contrary.

Discharge of persons apprehended if not conveyed out of United Kingdom within two months.

Execution of
warrant of
police magistrate.

Depositions to
be evidence.
6 & 7 Vict. c. 76.

cf. p. 21.

Authentication
of depositions
and warrants.
29 & 30 Vict.
c. 121.

13. The warrant of the police magistrate issued in pursuance of this Act may be executed in any part of the United Kingdom in the same manner as if the same had been originally issued or subsequently indorsed by a justice of the peace having jurisdiction in the place where the same is executed.

14. Depositions or statements on oath, taken in a foreign State, and copies of such original depositions or statements, and foreign certificates of or judicial documents stating the fact of conviction, may, if duly authenticated, be received in evidence in proceedings under this Act. [*explained*, to include affirmations—36 & 37 Vict. c. 60, s. 4].

15. Foreign warrants and depositions or statements on oath, and copies thereof, and certificates of or judicial documents stating the fact of a conviction, shall be deemed duly authenticated for the purposes of this Act if authenticated in manner provided for the time being by law or authenticated as follows:

- (1) If the warrant purports to be signed by a Judge, magistrate, or officer of the foreign State where the same was issued;
- (2) If the depositions or statements or the copies thereof purport to be certified under the hand of a Judge, magistrate, or officer of the foreign State where the same were taken to be the original depositions or statements, or to be true copies thereof, as the case may require; and
- (3) If the certificate of or judicial document stating the fact of conviction purports to be certified by a Judge, magistrate, or officer of the foreign State where the conviction took place; and

if in every case the warrants, depositions, statements, copies, certificates, and judicial documents (as the case may be) are authenticated by the oath of some witness or by being sealed with the official seal of the Minister of Justice, or some other Minister of State: And all Courts of Justice, justices, and magistrates shall take judicial notice of such official seal, and shall admit the documents so authenticated by it to be received in evidence without further proof.

Crimes committed at Sea.

Jurisdiction as
to crimes
committed at sea.

16. Where the crime in respect of which the surrender of a fugitive criminal is sought was committed on board any vessel

on the high seas which comes into any port of the United Kingdom, the following provisions shall have effect:

1. This Act shall be construed as if any stipendiary magistrate in England or Ireland, and any sheriff or sheriff substitute in Scotland, were substituted for the police magistrate throughout this Act, except the part relating to the execution of the warrant of the police magistrate:
2. The criminal may be committed to any prison to which the person committing him has power to commit persons accused of the like crime:
3. If the fugitive criminal is apprehended on a warrant issued without the order of a Secretary of State, he shall be brought before the stipendiary magistrate, sheriff, or sheriff substitute who issued the warrant, or who has jurisdiction in the port where the vessel lies, or in the place nearest to that port. [*explained*—36 & 37 Vict. c. 60, s. 6]. *cf. p. 21.*

Fugitive Criminals in British Possessions.

17. This Act, when applied by Order in Council, shall, unless it is otherwise provided by such Order, extend to every British possession in the same manner as if throughout this Act the British possession were substituted for the United Kingdom or England, as the case may require, but with the following modifications; namely,

- (1) The requisition for the surrender of a fugitive criminal who is in or suspected of being in a British possession may be made to the governor of that British possession by any person recognised by that governor as a consul general, consul, or vice-consul, or (if the fugitive criminal has escaped from a colony or dependency of the foreign State on behalf of which the requisition is made) as the governor of such colony or dependency:
- (2) No warrant of a Secretary of State shall be required, and all powers vested in or acts authorised or required to be done under this Act by the police magistrate and the Secretary of State, or either of them, in relation to the surrender of a fugitive criminal, may be done by the governor of the British possession alone:
- (3) Any prison in the British possession may be substituted for a prison in Middlesex:
- (4) A Judge of any Court exercising in the British possession the like powers as the Court of Queen's Bench exercises

Proceedings as to fugitive criminals in British possessions.

in England may exercise the power of discharging a criminal when not conveyed within 2 months out of such British possession.

Saving of laws of British possessions.

18. If by any law or ordinance, made before or after the passing of this Act by the Legislature of any British possession, provision is made for carrying into effect within such possession the surrender of fugitive criminals who are in or suspected of being in such British possession, Her Majesty may, by the Order in Council applying this Act in the case of any foreign State, or by any subsequent Order, either

suspend the operation within any such British possession of this Act, or of any part thereof, so far as it relates to such foreign State, and so long as such law or ordinance continues in force there, and no longer;

or direct that such law or ordinance, or any part thereof, shall have effect in such British possession, with or without modifications and alterations, as if it were part of this Act.

General Provisions.

Criminal surrendered by foreign State not triable for previous crime.

19. Where, in pursuance of any arrangement with a foreign State, any person accused or convicted of any crime which, if committed in England, would be one of the crimes described in the first schedule to this Act is surrendered by that foreign State, such person shall not, until he has been restored or had an opportunity of returning to such foreign State, be triable or tried for any offence committed prior to the surrender in any part of Her Majesty's dominions other than such of the said crimes as may be proved by the facts on which the surrender is grounded.

As to use of forms in second schedule.

20. The forms set forth in the second schedule to this Act, or forms near thereto as circumstances admit, may be used in all matters to which such forms refer, and in the case of a British possession may be so used, *mutatis mutandis*, and when used shall be deemed to be valid and sufficient in law.

Revocation, &c. of Order in Council.

21. Her Majesty may, by Order in Council, revoke or alter, subject to the restrictions of this Act, any Order in Council made in pursuance of this Act, and all the provisions of this Act with respect to original order shall (so far as applicable) apply, *mutatis mutandis*, to any such new Order.

Application of Act in Channel Islands and Isle of Man.

22. This Act (except so far as relates to the execution of warrants in the Channel Islands) shall extend to the Channel

Islands and Isle of Man in the same manner as if they were part of the United Kingdom; and the Royal Courts of the Channel Islands are hereby respectively authorised and required to register this Act.

23. Nothing in this Act shall affect the lawful powers of Her Majesty or of the Governor General of India in Council to make treaties for the extradition of criminals with Indian native States, or with other Asiatic States conterminous with British India, or to carry into execution the provisions of any such treaties made either before or after the passing of this Act. Saving for Indian treaties.

24. The testimony of any witness may be obtained in relation to any criminal matter pending in any Court or tribunal in a foreign State in like manner as it may be obtained in relation to any civil matter under the Act 19 & 20 Vict. c. 113, intituled "An Act to provide for taking evidence in Her Majesty's dominions in relation to civil and commercial matters pending before foreign tribunals;" and all the provisions of that Act shall be construed as if the term "civil matter" included a criminal matter, and the term "cause" included a proceeding against a criminal: provided that nothing in this section shall apply in the case of any criminal matter of a political character. [*amplified*, 36 & 37 Vict. c. 60, s. 5]. Power of foreign State to obtain evidence in United Kingdom.
cf. p. 21.

25. For the purposes of this Act, every colony, dependency, and constituent part of a foreign State, and every vessel of that State, shall (except where expressly mentioned as distinct in this Act) be deemed to be within the jurisdiction of and to be part of such foreign State. Foreign State includes dependencies

26. In this Act, unless the context otherwise requires,—
The term "British possession" means any colony, plantation, island, territory, or settlement within Her Majesty's dominions, and not within the United Kingdom, the Channel Islands, and Isle of Man; and all colonies, plantations, islands, territories, and settlements under one legislature, as herein-after defined, are deemed to be one British possession: Definition of terms.
"British possession"

The term "legislature" means any person or persons who can exercise legislative authority in a British possession, and where there are local legislatures as well as a central legislature, means the central legislature only: "Legislature"

The term "governor" means any person or persons administering the government of a British possession, and includes the governor of any part of India: "Governor"

“Extradition crime”	The term “extradition crime” means a crime which, if committed in England or within English jurisdiction, would be one of the crimes described in the first schedule to this Act:
“Conviction”	The terms “conviction” and “convicted” do not include or refer to a conviction which under foreign law is a conviction for contumacy, but the term “accused person” includes a person so convicted for contumacy:
“Fugitive criminal”	The term “fugitive criminal” means any person accused or convicted of an extradition crime committed within the jurisdiction of any foreign State who is in or is suspected of being in some part of Her Majesty’s dominions; and the term “fugitive criminal of a foreign State” means a fugitive criminal accused or convicted of an extradition crime committed within the jurisdiction of that State:
“Fugitive criminal of a foreign State”	
“Secretary of State”	The term “Secretary of State” means one of Her Majesty’s Principal Secretaries of State:*
“Police magistrate”	The term “police magistrate” means a chief magistrate of the metropolitan police courts, or one of the other magistrates of the metropolitan police court in Bow Street:
“Justice of the peace”	The term “justice of the peace” includes in Scotland any sheriff, sheriff’s substitute, or magistrate:
“Warrant”	The term “warrant,” in the case of any foreign State, includes, any judicial document authorising the arrest of a person accused or convicted of crime.

Repeal of Acts.

Repeal of Acts in third schedule. 27. The Acts specified in the third schedule to this Act are hereby repealed as to the whole of Her Majesty’s dominions; and this Act (with the exception of anything contained in it which is inconsistent with the treaties referred to in the Acts so repealed) shall apply (as regards crimes committed either before or after the passing of this Act), in the case of the foreign States with which those treaties are made, in the same manner as if an Order in Council referring to such treaties had been made in pursuance of this Act, and as if such Order had directed that every law and ordinance which is in force in any British possession with respect to such treaties should have effect as part of this Act. [*last para., rep. S. L. R. Act, 1883*].

* This definition, rep. S. L. R. (No. 2) Act, 1893.

FIRST SCHEDULE.

List of Crimes.

The following list of crimes is to be construed according to the law existing in England, or in a British possession (as the case may be), at the date of the alleged crime, whether by common law or by statute made before or after the passing of this Act :

- Murder and attempt and conspiracy to murder.
- Manslaughter.
- Counterfeiting and altering money and uttering counterfeit or altered money.
- Forgery, counterfeiting, and altering, and uttering, what is forged or counterfeited or altered.
- Embezzlement and larceny.
- Obtaining money or goods by false pretences.
- Crimes by bankrupts against bankruptcy law.
- Fraud by a bailee, banker, agent, factor, trustee, or director, or member, or public officer of any company made criminal by any Act for the time being in force.
- Rape.
- Abduction.
- Child-stealing.
- Burglary and housebreaking.
- Arson.
- Robbery with violence.
- Threats by letter or otherwise with intent to extort.
- Piracy by law of nations.
- Sinking or destroying a vessel at sea, or attempting or conspiring to do so.
- Assaults on board a ship on the high seas with intent to destroy life or to do grievous bodily harm.
- Revolt or conspiracy to revolt by two or more persons on board a ship on the high seas against the authority of the master.

36 & 37 VICT. c. 60, SCHEDULE. [for the Act, *see* p. 20].

- Kidnapping and false imprisonment.
- Perjury, and subornation of perjury, whether under common or statute law.
- Any indictable offence under the Larceny Act, 1861, (24 & 25 Vict. c. 96), or any Act amending or substituted for the same, which is not included in the 1st schedule to the principal Act.

Any indictable offence under 24 & 25 Vict. c. 97, (Malicious Damage Act, 1861 ;
 under 24 & 25 Vict. c. 98, (Forgery Act, 1861.
 under 24 & 25 Vict. c. 99, (Coinage Offences Act, 1861 ;
 under 24 & 25 Vict. c. 100, (Offences against the Person Act, 1861 ;
 or any Act amending or substituted for the same, which is not included in the 1st schedule to the principal Act.
 Any indictable offence under the laws for the time being in force in relation to bankruptcy which is not included in the 1st schedule to the principal Act.

6 EDW. VII, c. 15. [for the Act, *see* p. 23].

Bribery.

36 & 37 VICT. c. 88, s. 27.

Offences committed against this Act [Slave Trade Act, 1873] or the enactments* with which this Act is to be construed as one or other wise in connexion with the slave trade, whether committed on the high seas or on land, or partly on the high seas and partly on land.

* 5 Geo. IV, c. 113 (Slave Trade Act, 1824).
 6 & 7 Vict. c. 98 (Slave Trade Act, 1843).

SECOND SCHEDULE.

Form of Order of Secretary of State to the Police Magistrate.

To the Chief Magistrate of the Metropolitan Police Courts *or*
 other Magistrate of the Metropolitan Police Court in Bow
 Street [*or* the Stipendiary Magistrate at _____].

WHEREAS, in pursuance of an arrangement with
 referred to in an Order of Her Majesty in Council dated the
 day of _____, a requisition has been made to me,
 _____, one of Her Majesty's Principal Secretaries of
 State, by _____, the diplomatic representative
 of _____, for the surrender of _____,
 late of _____, accused [*or* convicted] of the
 commission of the crime of _____ within the jurisdiction
 of _____ : Now I hereby, by this my order under my
 hand and seal, signify to you that such requisition has been made, and
 require you to issue your warrant for the apprehension of such fugitive,

provided that the conditions of The Extradition Act, 1870, relating to the issue of such warrant, are in your judgment complied with.

Given under the hand and seal of the undersigned, one of Her Majesty's Principal Secretaries of State, this
day of 18 .

J. P.

Form of Warrant of Apprehension by Order of Secretary of State.

To all and each of the constables of the metropolitan police force [or of the county or borough of Metropolitan police district, [or county or borough of] to wit.

WHEREAS the Right Honourable one of Her Majesty's Principal Secretaries of State by order under his hand and seal, hath signified to me that requisition hath been duly made to him for the surrender of late of accused [or convicted] of the commission of the crime of within the jurisdiction of : This is therefore to command you in Her Majesty's name forthwith to apprehend the said pursuant to The Extradition Act, 1870, wherever he may be found in the United Kingdom or Isle of Man, and bring him before me or some other [*magistrate sitting in this Court], to show cause why he should not be surrendered in pursuance of the said Extradition Act, for which this shall be your warrant.

Given under my hand and seal at [*Bow Street, one of the police Courts of the metropolis] this day of 18 .

J. P.

* alter as required.

Form of Warrant of Apprehension without Order of Secretary of State.

To all and each of the constables of the metropolitan police force [or of the county or borough of Metropolitan police district, [or county or borough of] to wit.

WHEREAS it has been shewn to the undersigned, one of Her Majesty's justices of the peace in and for the metropolitan police district [or the said county or borough of] that late of is accused [or convicted] of the commission of the crime of within the jurisdiction of : This is therefore to command you in Her Majesty's name forthwith to apprehend the said and to bring him before me or some other magistrate sitting at this Court [or one of Her Majesty's justices of the peace in and for the county [or borough] of] to be further dealt with according to law, for which this shall be your warrant.

Given under my hand and seal at Bow Street, one of the police
Courts of the metropolis, [*or* in the
county *or* borough aforesaid] this day
of 18 .

J. P.

*Form of Warrant for bringing Prisoner before the
Police Magistrate.*

County [*or*
borough of
] to wit.

To constable of the police force
of and to all other peace officers
in the said county [*or* borough] of .

WHEREAS late of
accused [*or* alleged to be convicted of] the commission of the crime
of within the jurisdiction of
has been apprehended and brought before the undersigned, one of
Her Majesty's justices of the peace in and for the said county [*or*
borough] of : And whereas by The Extradition
Act, 1870, he is required to be brought before the chief magistrate
of the Metropolitan Police Courts, or one of the police magistrates of
the metropolis sitting at Bow Street, within the metropolitan police
district [*or* the stipendiary magistrate for]:
This is therefore to command you the said constable in Her Majesty's
name forthwith to take and convey the said
to the metropolitan police district [*or* the said
and there carry him before the said chief magistrate or one of the
police magistrates of the metropolis sitting at Bow Street within
the said district [*or* before a stipendiary magistrate sitting in the
said] to show cause why he should not be
surrendered in pursuance of The Extradition Act, 1870, and other-
wise to be dealt with in accordance with law, for which this shall be
your warrant.

Given under my hand and seal at in the
county [*or* borough] aforesaid, this day
of 18 .

J. P.

Form of Warrant of Committal.

Metropolitan
police district,
[*or* county *or*
borough of]
to wit.

To one of the constables of
the metropolitan police force, [*or* of the police force of
the county *or* borough of],
and to the keeper of the .

BE it remembered, that on this day of
in the year of our Lord late of
is brought before me the chief magistrate of the
metropolitan police courts [*or* one of the police magistrates of the

metropolis] sitting at the police court in Bow Street, within the metropolitan police district, [*or* a stipendiary magistrate for], to show cause why he should not be surrendered in pursuance of The Extradition Act, 1870, on the ground of his being accused [*or* convicted] of the commission of the crime of within the jurisdiction of , and forasmuch as no sufficient cause has been shown to me why he should not be surrendered in pursuance of the said Act:

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

Given under my hand and seal at Bow Street, one of the police courts of the metropolis, [*or* at the said]
this day of 18 .

J. P.

Form of Warrant of Secretary of State for Surrender of Fugitive.

To the keeper of and to .

WHEREAS late of accused [*or* convicted] of the commission of the crime of within the jurisdiction of , was delivered into the custody of you the keeper of by warrant dated pursuant to the Extradition Act, 1870:

Now I do hereby, in pursuance of the said Act, order you the said keeper to deliver the body of the said into the custody of the said , and I command you the said to receive the said into your custody, and to convey him within the jurisdiction of the said , and there place him in the custody of any person or persons appointed by the said to receive him, for which this shall be your warrant.

Given under the hand and seal of the undersigned, one of Her Majesty's Principal Secretaries of State, this day of .

THIRD SCHEDULE.

Repeals.

6 & 7 Vict. c. 75.*	An Act for giving effect to a convention between Her Majesty and the King of the French for the apprehension of certain offenders.
6 & 7 Vict. c. 76.	An Act for giving effect to a treaty between Her Majesty and the United States of America for the apprehension of certain offenders.
8 & 9 Vict. c. 120.	An Act for facilitating execution of the treaties with France and the United States of America for the apprehension of certain offenders.
25 & 26 Vict. c. 70.*	An Act for giving effect to a convention between Her Majesty and the King of Denmark for the mutual surrender of criminals.
29 & 30 Vict. c. 121.	An Act for the amendment of the law relating to treaties of extradition.

* The schedule repealed as to these two Acts, S. L. R. (No. 2) Act, 1893.

36 & 37 VICT. c. 60.*An Act to amend the Extradition Act, 1870.*

[5th August, 1873.]

Construction,
and short title.

1. This Act shall be construed as one with the Extradition Act, 1870, (in this Act referred to as the principal Act,) and the principal Act and this Act may be cited together as the Extradition Acts, 1870 and 1873, and this Act may be cited alone as the Extradition Act, 1873.

2. Whereas by s. 6 of the principal Act it is enacted as follows: [for the section, *see* p. 7.]

Crimes com-
mitted before
passing of
principal Act.

And whereas doubts have arisen as to the application of the said section to crimes committed before the passing of the principal Act, and it is expedient to remove such doubts, it is therefore hereby declared that—

A crime committed before the date of the Order includes in the said section a crime committed before the passing of the principal Act, and the principal Act and this Act shall be construed accordingly.

Liability of
accessories to
be surrendered.

3. Whereas a person who is accessory before or after the fact, or counsels, procures, commands, aids, or abets the commission of any indictable offence, is by English law liable to be tried and punished as if he were the principal offender, but doubts have arisen whether such person as well as the principal offender

can be surrendered under the principal Act, and it is expedient to remove such doubts; it is therefore hereby declared that—

Every person who is accused or convicted of having counselled, procured, commanded, aided, or abetted the commission of any extradition crime, or of being accessory before or after the fact to any extradition crime, shall be deemed, for the purposes of the principal Act and this Act, to be accused or convicted of having committed such crime, and shall be liable to be apprehended and surrendered accordingly.

4. Be it declared, that the provisions of the principal Act relating to depositions and statements on oath taken in a foreign State, and copies of such original depositions and statements, do and shall extend to affirmations taken in a foreign State, and copies of such affirmations. Statements on oath to include affirmations.

5. A Secretary of State may, by order under his hand and seal, require a police magistrate or a justice of the peace to take evidence for the purposes of any criminal matter pending in any court or tribunal in any foreign State; and the police magistrate or justice of the peace, upon the receipt of such order, shall take the evidence of every witness appearing before him for the purpose in like manner as if such witness appeared on a charge against some defendant for an indictable offence, and shall certify at the foot of the depositions so taken that such evidence was taken before him, and shall transmit the same to the Secretary of State; such evidence may be taken in the presence or absence of the person charged, if any, and the fact of such presence or absence shall be stated in such deposition. Power of taking evidence in United Kingdom for foreign criminal matters. [cf. s. 24 of principal Act: ante, p. 13].

Any person may, after payment or tender to him of a reasonable sum for his costs and expenses in this behalf, be compelled, for the purposes of this section, to attend and give evidence and answer questions and produce documents, in like manner and subject to the like conditions as he may in the case of a charge preferred for an indictable offence.

Every person who wilfully gives false evidence before a police magistrate or justice of the peace under this section shall be guilty of party of perjury.

Provided that nothing in this section shall apply in the case of any criminal matter of a political character.

6. The jurisdiction conferred by s. 16 of the principal Act on a stipendiary magistrate, and a sheriff or sheriff substitute, shall be deemed to be in addition to, and not in derogation or exclusion of, the jurisdiction of the police magistrate. Explanation s. 16 of s. 16 of principal Act.

Explanation of
diplomatic
representative
and consul.

7. For the purposes of the principal Act and this Act a diplomatic representative of a foreign State shall be deemed to include any person recognised by the Secretary of State as a consul-general of that State, and a consul or vice-consul shall be deemed to include any person recognised by the governor of a British possession as a consular officer of a foreign State.

Crimes added
to schedule to
principal Act.

8. The principal Act shall be construed as if there were included in the first schedule to that Act the list of crimes contained in the schedule to this Act.

for the Schedule, *see* p. 15.

58 & 59 VICT. c. 33.

An Act to amend the Extradition Acts, 1870 and 1873, so far as respects the Magistrate by whom and the place in which the case may be heard and the criminal held in custody.

[6th July, 1895.]

Hearing case
elsewhere than
at Bow Street.

1.—(1) Where a fugitive criminal has been apprehended in pursuance of a warrant under s. 8 of the Extradition Act, 1870, and a Secretary of State on representation made by or on behalf of the criminal is of opinion that his removal for the purpose of his case being heard at Bow Street will be dangerous to his life or prejudicial to his health, the Secretary of State, if it appears to him consistent with the Order in Council under the Extradition Act, 1870, applicable to the case, may in his discretion by order, stating the reasons for such opinion, direct the case to be heard before such magistrate as is named in the order, and at the place in the United Kingdom at which the criminal was apprehended, or for the time being is.

(2) The magistrate may be, if the place is in England, a metropolitan police magistrate or a stipendiary magistrate, and if it is in Scotland, a sheriff or sheriff-substitute, and if it is in Ireland, any stipendiary magistrate, and the magistrate hearing the case in pursuance of the order shall for that purpose be deemed to be a police magistrate within the meaning of the Extradition Act, 1870, and also shall have the same jurisdiction, duties, and powers, as near as may be, and may commit to the same prison as if he were a magistrate for the county, borough, or place in which the hearing takes place.

(3) Provided that, when the fugitive criminal is committed to prison to await his surrender, the committing magistrate, if of opinion that it will be dangerous to the life or prejudicial to the health of the prisoner to remove him to prison, may order him to be held in custody at the place in which he for the time being is, or any other place named in the order to which the magistrate thinks he can be removed without danger to his life or prejudice to his health, and while so held he shall be deemed to be in legal custody, and the Extradition Acts, 1870 and 1873, shall apply to him as if he were in the prison to which he is committed, and the forms of warrant used under the said Acts may be varied accordingly.

2. This Act may be cited as the Extradition Act, 1895, and shall be construed together with the Extradition Acts, 1870 and 1873; and those Acts and this Act may be cited collectively as the Extradition Acts, 1870 to 1895. Short title and construction.

6 EDW. VII, c. 15.

An Act to include bribery amongst extradition crimes.

[4th August, 1906.]

WHEREAS as convention has been concluded between His Majesty and the President of the United States for including in the list of crimes on account of which extradition may be granted certain offences, and amongst others bribery:

And whereas it is provided by the said convention that it shall come into force within 10 days after publication in conformity with the laws of the High Contracting Parties:

And whereas bribery is not at present included in the list of crimes in the first schedule to the Extradition Act, 1870, and the said convention cannot be published in conformity with the laws of the United Kingdom until bribery is so included:

1. The Extradition Act, 1870, shall be construed as if bribery were included in the list of crimes in the first schedule to that Act. Addition of bribery to extradition crimes.

2. This Act may be cited as the Extradition Act, 1906; and the Extradition Acts, 1870 to 1895, and this Act may be cited together as the Extradition Acts, 1870 to 1906.

II

THE EXTRADITION TREATIES.

IT has not been thought necessary to give the foreign text of the Treaties, except in the case of the articles defining the extradition offences; for the English, although it often shows signs of being a translation is sufficient for all purposes of general principle and procedure. In a few, though not very important cases, slight amendments of the English seem to be necessary.

The Treaties are embodied in, and put into force by, Orders in Council, in accordance with s. 2, of the Act of 1870. The formal parts of the Orders have however been only given once, as they practically follow a common form.

Many of the articles of the Treaties also run in common forms, and some of the Treaties themselves are based on common models. But in addition to occasional slight variations in the language used, there are often important variations in such matters as the delays within which certain things have to be done. It has, therefore, been thought better to set out all the Treaties in full, instead of making any attempt to group them.

ARGENTINE REPUBLIC.

[Treaty, 22nd May, 1889. O. in C. 29th January, 1894.
Acts in force from 9th February, 1894.]

WHEREAS by the Extradition Acts, 1870 and 1873, it was amongst other things enacted that where an arrangement has been made with any foreign State with respect to the surrender to such State of any fugitive criminals, Her Majesty may, by Order in Council, direct that the said Acts shall apply in the case of such foreign State; and that Her Majesty may, by the same or any subsequent Order, limit the operation of the Order,

Argentine Republic.

and restrict the same to the fugitive criminals who are in, or suspected of being in, the part of Her Majesty's dominions specified in the Order, and render the operation thereof subject to such conditions, exceptions, and qualifications as may be deemed expedient; and that if by any law made after the passing of the Act of 1870 by the Legislature of any British possession, provision is made for carrying into effect within such possession the surrender of fugitive criminals who are in, or suspected of being in, such British possession, Her Majesty may, by the Order in Council applying the said Acts in the case of any foreign State, or by any subsequent Order, suspend the operation within any such British possession of the said Acts, or of any part thereof, so far as it relates to such foreign State, and so long as such law continues in force there and no longer:

And whereas a treaty was concluded on the 22nd day of May, 1889, between Her Majesty and the President of the Argentine Republic for the mutual extradition of fugitive criminals, which treaty is in the terms following:—

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, and his Excellency the President of the Argentine Republic, having judged it expedient, with a view to the better administration of justice and to the prevention of crime within the two countries and their jurisdictions, that persons charged with or convicted of the crimes or offences herein-after enumerated, and being fugitives from justice, should, under certain circumstances, be reciprocally delivered up, have named as Plenipotentiaries to conclude a Treaty (that is to say):

* * * * *

Agreement to extradite.

I.—The High Contracting Parties engage to deliver up to each other, under certain circumstances and conditions stated in the present Treaty, those persons who, being accused or convicted of any of the crimes or offences enumerated in Article II, committed in the territory of the one Party, shall be found within the territory of the other Party.

Extradition offences.

II.—Extradition shall be reciprocally granted for the following crimes or offences:—

- | | |
|---|--|
| <p>1. Murder (including assassination, parricide, infanticide, poisoning), or attempt or conspiracy to murder.</p> <p>2. Manslaughter.</p> <p>3. Administering drugs or using instruments with intent</p> | <p>1. Asesinato (incluso el asesinato con violencia, parricidio, infanticidio, ó envenenamiento), ó la tentativa ó conspiracion para asesinar.</p> <p>2. Homicidio.</p> <p>3. La administracion de drogas ó el empleo de instru-</p> |
|---|--|

to procure the miscarriage of women.

4. Rape.

5. Carnal knowledge, or any attempt to have carnal knowledge of a girl under 16 years of age, if the evidence produced justifies committal for those crimes according to the laws of both the Contracting Parties.

6. Indecent assault.

7. Kidnapping and false imprisonment, child-stealing.

8. Abduction.

9. Bigamy.

10. Maliciously wounding or inflicting grievous bodily harm.

11. Assault occasioning actual bodily harm.

12. Threats by letter or otherwise, with intent to extort money or other things of value.

13. Perjury or subornation of perjury.

14. Arson.

15. Burglary or housebreaking, robbery with violence, larceny, or embezzlement.

16. Fraud by a bailee, banker, agent, factor, trustee, director, member, or public officer of any company, punishable with imprisonment for not less than one year by any law for the time being in force.

mentos con el proposito de procurar el aborto.

4. Estupro.

5. Conocimiento carnal ó las tentativas de tenerlo con una niña menor de diez y seis años, siempre que el testimonio aducido justifique el enjuiciamiento por esos crímenes, segun las leyes de las dos Altas Partes Contratantes.

6. Atentado contra el pudor.

7. Robo y secuestro de un ser humano, sustraccion de niño.

8. Rapto.

9. Bigamia.

10. Lesiones ó daño corporal grave hecho intencionalmente.

11. Ataque á las personas del que resulte grave daño corporal.

12. Amenazas, ya sea por medio de cartas ó de otra manera, con la intencion de sacar dinero ú otros objetos de valor.

13. Perjurio ó tentativas de conseguirlo.

14. Incendio voluntario.

15. Robo, ú otros crímenes ó sus tentativas cometidas con fractura, robo con violencia, hurto y malversacion de valores publicos ó particulares.

16. Fraude cometido por un depositario, banquero, agente, comisionado, fideicomisario, director, miembro ó empleado publico de qualquiera Compañia, siempre que sea considerado como crimen con pena no menor de un año por una ley que esté en vigor.

Argentine
Republic.

Argentine Republic.

17. Obtaining money, valuable security, or goods by false pretences; receiving any money, valuable security, or other property, knowing the same to have been stolen or unlawfully obtained, the value thereof exceeding 1,000 dollars, or 200*l.* sterling.

18.—(a) Counterfeiting or altering money, or bringing into circulation counterfeited or altered money.

(b) Knowingly making, without lawful authority, any instrument, tool, or engine adapted and intended for the counterfeiting of the coin of the realm.

(c) Forgery, or uttering what is forged.

19. Crimes against bankruptcy law.

20. Any malicious act done with intent to endanger the safety of any person travelling or being upon a railway.

21. Malicious injury to property, if such offence be indictable.

22. Piracy and other crimes or offences committed at sea against persons or things which, according to the laws of the High Contracting Parties, are extradition offences, and are punishable by more than one year's imprisonment.

17. El obtener dinero, garantías de valor, ó mercaderías con pretextos falsos; recibir dinero, garantías de valor ú otros bienes, sabiendo que han sido robados ó habidos indebidamente, y excedido su valor de mil pesos ó 200*l.* (doscientas).

18.—(a) Falsificación ó alteración de moneda, circulación de moneda falsificada ó alterada.

(b) Fabricación á sabiendas y sin autorización legal de cualquier instrumento, herramienta, ó aparato adaptado y destinado á la falsificación de la moneda nacional.

(c) Falsificación ó alteración de firmas ó valores, ó circulación de lo falsificado ó alterado.

19. Crímenes contra les leyes de bancarrota.

20. Cualquier acto hecho con intención criminal, y que tenga por objeto poner en peligro la seguridad de una persona que se encuentre viajando en un ferro-carril, ó que se halle en él.

21. Daño hecho con intención criminal á la propiedad, siempre que la ofensa sea procesable.

22. Piratería, y otros crímenes ó delitos cometidos en el mar sobre las personas ó sobre las cosas, y que, según las leyes respectivas de las dos Altas Partes Contratantes, sean delitos de extradición y tengan más de un año de pena.

23. Dealing in slaves in such manner as to constitute a criminal offence against the laws of both States.

23. Trata de esclavos, de manera tal que constituya una ofensa criminal contra las leyes de ambos Estados.

Argentine Republic.

The extradition is also to be granted for participation in any of the aforesaid crimes, provided such participation be punishable by the laws of both Contracting Parties. Accessories.

Extradition may also be granted at the discretion of the State applied to in respect of any other crime for which, according to the laws of both the Contracting Parties for the time being in force, the grant can be made. Other offences.

III.—Either Government reserves the right to refuse or grant the surrender of its own subjects or citizens to the other Government. Subjects.

IV.—The extradition shall not take place if the person claimed on the part of Her Majesty's Government, or the person claimed on the part of the Government of the Argentine Republic, has already been tried and discharged or punished, or is still under trial in the territory of the Argentine Republic or in the United Kingdom respectively, for the crime for which his extradition is demanded. No extradition if person has been or is being tried.

If the person claimed on the part of Her Majesty's Government, or on the part of the Government of the Argentine Republic, should be under examination for any other crime in the territory of the Argentine Republic or in the United Kingdom respectively, his extradition shall be deferred until the conclusion of the trial and the full execution of any punishment awarded to him. Trial for another offence pending, surrender postponed.

V.—The extradition shall not take place if, subsequently to the commission of the crime, or the institution of the penal prosecution or the conviction thereon, exemption from prosecution or punishment has been acquired by lapse of time, according to the laws of the State applying or applied to. No extradition if offence prescribed.

It shall likewise not take place when, according to the laws of either country, the maximum punishment for the offence is imprisonment for less than one year. Degree of extraditable offence.

VI.—A fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded is one of a political character, or if he prove that the requisition for his surrender has, in fact, been made with a view to try or punish him for an offence of a political character. Political offences.

<p>Argentine Republic.</p> <hr/> <p>Trial after surrender to be limited to extradition offence.</p>	<p>VII.—A person surrendered can in no case be kept in prison or be brought to trial in the State to which the surrender has been made, for any other crime, or on account of any other matters, than those for which the extradition shall have taken place, until he has been restored, or has had an opportunity of returning to the State by which he has been surrendered. This stipulation does not apply to crimes committed after the extradition.</p>
<p>Requisition.</p>	<p>VIII.—The requisition for extradition shall be made through the Diplomatic Agents of the High Contracting Parties respectively.</p>
<p>Arrest to be justified by law of extraditing State ;</p>	<p>The requisition for the extradition of an accused person must be accompanied by a warrant of arrest issued by the competent authority of the State requiring the extradition, and by such evidence as, according to the laws of the place where the accused is found, would justify his arrest if the crime had been committed there.</p>
<p>evidence of conviction.</p>	<p>If the requisition relates to a person already convicted, it must be accompanied by the sentence of condemnation passed against the convicted person by the competent Court of the State that makes the requisition for extradition.</p>
<p>Procedure.</p>	<p>A sentence passed <i>in contumaciam</i> is not to be deemed a conviction, but a person so sentenced may be dealt with as an accused person.</p> <p>IX.—If the requisition for extradition be in accordance with the foregoing stipulations, the competent authorities of the State applied to shall proceed to the arrest of the fugitive.</p> <p>X.—A fugitive criminal may be apprehended under a warrant issued by any Police Magistrate, Justice of the Peace, or other competent authority in either country on such information or complaint, and such evidence, or after such proceedings, as would, in the opinion of the authority issuing the warrant, justify the issue of a warrant if the crime had been committed or the person convicted in that part of the dominions of the two Contracting Parties in which the Magistrate, Justice of the Peace, or other competent authority exercises jurisdiction: provided, however, that in the United Kingdom the accused shall, in such case, be sent as speedily as possible before a Police Magistrate in London. He shall, in accordance with this Article, be discharged, as well in the Argentine Republic as in the United Kingdom, if within the term of 30 days a requisition for extradition shall not have been made by the Diplomatic Agent of his country in accordance</p>
<p>Delay for presenting requisition.</p>	

with the stipulations of this Treaty. The same rule shall apply to the cases of persons accused or convicted of any of the crimes or offences specified in this Treaty, and committed on the high seas on board any vessel of either country which may come into a port of the other.

Argentine
Republic.

High sea
offences.

XI.—The extradition shall take place only if the evidence be found sufficient, according to the laws of the State applied to, either to justify the committal of the prisoner for trial, in case the crime had been committed in the territory of the same State, or to prove that the prisoner is the identical person convicted by the Courts of the State which makes the requisition, and that the crime of which he has been convicted is one in respect of which extradition could, at the time of such conviction, have been granted by the State applied to; and no criminal shall be surrendered until after the expiration of 15 days from the date of his committal to prison to await the warrant for his surrender.

Evidence to
justify committal
for trial in
extraditing State.

XII.—In the examinations which they have to make in accordance with the foregoing stipulations, the authorities of the State applied to shall admit as valid evidence the sworn depositions or statements of witnesses taken in the other State, or copies thereof, and likewise the warrants and sentences issued therein, and certificates of, or judicial documents stating, the fact of a conviction, provided the same are authenticated as follows:—

Evidence taken
in claiming
State to be
admitted.

i. A warrant must purport to be signed by a Judge, Magistrate, or officer of the other State.

ii. Depositions, or affirmations, or the copies thereof, must purport to be certified under the hand of a Judge, Magistrate, or officer of the other State, to be the original depositions or affirmations, or to be true copies thereof, as the case may require.

Authentication
of documents.

iii. A certificate of or judicial document stating the fact of a conviction must purport to be certified by a Judge, Magistrate, or officer of the other State.

iv. In every case such warrant, deposition, affirmation, copy, certificate, or judicial document must be authenticated either by the oath of some witness, or by being sealed with the official seal of the Minister of Justice, or some other Minister of the other State; but any other mode of authentication for the time being permitted by the law of the country where the examination is taken, may be substituted for the foregoing.

XIII.—If the individual claimed by one of the High Contracting Parties in pursuance of the present Treaty should be also claimed by one or several other Powers, on account of other

Claims by
several States.

- Argentine Republic.** crimes or offences committed upon their respective territories, his extradition shall be granted to that State whose demand is earliest in date.
- Delay for presenting evidence.** XIV.—If sufficient evidence for the extradition be not produced within 2 months from the date of the apprehension of fugitive, the or within such further time as the State applied to, or the proper tribunal thereof shall direct, the fugitive shall be set at liberty.
- Articles seized.** XV.—All articles seized which were in the possession of the person to be surrendered at the time of his apprehension shall, if the competent authority of the State applied to for the extradition has ordered the delivery of such articles, be given up when the extradition takes place; and the said delivery shall extend not merely to the stolen articles, but to everything that may serve as a proof of the crime.
- Expenses.** XVI.—All expenses connected with extradition shall be borne by the demanding State.
- XVII.—The stipulations of the present Treaty shall be applicable to the Colonies and foreign possessions of Her Britannic Majesty, so far as the laws for the time being in force in such Colonies and foreign possessions respectively will allow.
- Extradition by British Colonies.** The requisition for the surrender of a fugitive criminal who has taken refuge in any of such Colonies or foreign possessions shall be made to the Governor or chief authority of such Colony or possession by the Chief Consular officer of the Argentine Republic in such Colony or possession.
- Such requisition may be disposed of, subject always, as nearly as may be, and so far as the law of such Colony or foreign possession will allow, to the provisions of this Treaty, by the said Governor or chief authority, who, however, shall be at liberty either to grant the surrender or to refer the matter to his Government.
- Her Britannic Majesty shall, however, be at liberty to make special arrangements in the British Colonies and foreign possessions for the surrender of Argentine criminals who may take refuge within such Colonies and foreign possessions, on the basis, so far as the law of such Colony or foreign possession will allow, of the provisions of the present Treaty.
- Extradition to British Colonies.** Requisitions for the surrender of a fugitive criminal emanating from any Colony or foreign possession of Her Britannic Majesty shall be governed by the rules laid down in the preceding Articles of the present Treaty.

XVIII.—The present Treaty shall come into force 10 days after its publication, in conformity with the forms prescribed by the laws of the High Contracting Parties. It may be terminated by either of the High Contracting Parties by a notice not exceeding one year, and not less than 6 months.

Argentine Republic.

Coming into force of Treaty

The Treaty, after receiving the approval of the Congress of the Argentine Republic, shall be ratified, and the ratifications shall be exchanged at Buenos Ayres so soon as possible.

* * * * *

And whereas the ratifications of the said Treaty were exchanged at Buenos Ayres on the 15th December, 1893: Now, therefore, Her Majesty, by and with the advice of Her Privy Council, and in virtue of the authority committed to Her by the said recited Acts, doth order, and it is hereby ordered, that from and after the 9th February, 1894, the said Acts shall apply in the case of the Argentine Republic, and of the said Treaty with the Argentine Republic.

AUSTRIA-HUNGARY.

[Treaty, 3rd December, 1873. O. in C. 17th March, 1874.
Acts in force from 30th March, 1874. Declaration 26th June, 1901.
O. in C. 15th September, 1902.]

I.—The High Contracting Parties engage to deliver up to each other those persons who, being accused or convicted of a crime committed in the territory of the one Party, shall be found within the territory of the other Party under the circumstances and conditions stated in the present Treaty.

Agreement to extradite.

II.—The crimes for which the extradition is to be granted are the following:—†

Extradition offences.

- | | |
|--|---|
| 1. Murder, or attempt to murder. | 1. Mord, Mordversuch. |
| 2. Manslaughter. | 2. Todtschlag. |
| 3. Counterfeiting or altering money, uttering or bringing into circulation counterfeit or altered money. | 3. Nachmachen oder Verfälschen von Metallgeld, Verausgabung oder Inverkehrbringen nachgemachten oder verfälschten Metallgeldes. |
| 4. Forgery or counterfeiting; | 4. Fälschen oder nach- |

† The Treaty is in Magyar as well as in English and German.

Austria-
Hungary.

or altering or uttering what is forged or counterfeited or altered; comprehending the crimes designated in the Austrian Penal Laws or in the Hungarian Penal Laws and Customs as counterfeiting or falsification of paper money, bank notes, or other securities, forgery or falsification of other public or private documents, likewise the uttering or bringing into circulation, or wilfully using such counterfeited, forged, or falsified papers.

* [*sic*: read
"in accordance
with"].

The definition is to be determined accordingly with* the Austrian Penal Laws if the extradition shall take place from Austria, and accordingly with* the Hungarian Penal Laws and Customs if the extradition shall take place from Hungary.

5. Embezzlement or larceny.

6. Obtaining money or goods by false pretences.

7. Crimes against bankruptcy law: comprehending the crimes considered as frauds committed by the bankrupt in connexion with the bankruptcy, according with the Austrian Penal Laws if the extradition shall take place from Austria, and with the Hungarian Penal Laws if

machen oder Verändern, oder Inverkehrbringen von Gefälschtem oder Nachgemachtem oder Verändertem umfassend alle Verbrechen, welche nach den oesterreichischen Strafgesetzen oder nach den ungarischen Strafgesetzen und Gewohnheiten als Nachmachen oder Verfälschen von Papiergeld, Banknoten oder anderen Werthpapieren, Nachmachung oder Verfälschung anderer öffentlichen oder Privat-Urkunden, imgleichen Verausgabung oder Inverkehrbringen oder wissentliches Gebrauchen solcher nachgemachten oder gefälschten Papiere bezeichnet sind. Der Begriff ist nach den oesterreichischen Strafgesetzen festzustellen, wenn die Auslieferung aus Oesterreich erfolgen soll, und nach ungarischen Strafgesetzen und Gewohnheiten wenn die Auslieferung aus Ungarn erfolgen soll.

5. Diebstahl und Unterschlagung (Veruntreuung).

6. Erlangung von Geld oder andern Sachen durch falsche Vorspiegelungen (Betrug).

7. Bertrügerischer Bankerott, umfassend die Verbrechen, welche, wenn die Auslieferung aus Oesterreich Platz greifen soll, nach den oesterreichischen Strafgesetzen, und wenn die Auslieferung aus Ungarn Platz greifen soll, nach den ungarischen Strafgesetzen

the extradition shall take place from Hungary.

8. Fraud by a bailee, banker, agent, factor, trustee, or director or member or public officer of any company, made criminal by any law for the time being in force.

9. Rape.

10. Abduction.

11. Child-stealing, kidnaping, and false imprisonment.

12. Burglary or housebreaking.

13. Arson.

14. Robbery with violence or with menaces.

15. Threats by letter or otherwise with intent to extort.

16. Sinking or destroying a vessel at sea, or attempting to do so.

17. Assaults on board a ship on the high seas, with intent to destroy life, or to do grievous bodily harm.

als ein, von dem Gemeinschuldner in Zusammenhange mit dem Bankerott verübter Betrug anzusehen sind.

8. Untreue Seitens eines Verwalters und Beauftragten, Banquiers, Agenten, Prokuristen, Vormundes oder Curators, Vorstandes, Mitgliedes oder Beamten irgend einen Gesellschaft, soweit diese Untreue nach den bestehenden Gesetzen mit Strafe bedroht ist.

9. Nothzucht.

10. Entführung.

11. Kinderraub, Menschenraub, unbefugte Einschränkung der persönlichen Freiheit eines Menschen.

12. Einbrechen und Eindringen in ein Wohnhaus oder dazu gehöriges Nebengebäude mit der Absicht, ein Verbrechen zu begehen, zur Tageszeit (*housebreaking*) oder Nachtzeit (*burglary*).

13. Vorsätzliche Brandstiftung (Brandlegung).

14. Raub mit Anwendung von Gewaltthätigkeiten oder Drossungen.

15. Erpressungen.

16. Vorsätzliche Versenkung oder Zerstörung eines Schiffes zur See, oder Versuch dieses Verbrechens.

17. Angriffe auf Personen an Bord eines Schiffes auf hoher See in der Absicht zu tödten oder eine schwere Körperverletzung zu verüben.

Austria-
Hungary.

<u>Austria-Hungary.</u>	18. Revolt, or conspiracy to revolt, by two or more persons on board a ship on the high seas, against the authority of the master.	18. Widerstand mit Thätlichkeiten (<i>revolt</i>) gegen den Schiffsführer an Bord eines Schiffes auf hoher See, wenn dieser von zwei oder mehreren Personen verübt wird, oder Verschwörung zu einem solchen Widerstande.
	19. Perjury or subornation of perjury.	19. Falsche eidliche Aussage, Verleitung zu derselben.
	20. Malicious injury to property, if the offence be indictable.	20. Boshafte Beschädigung fremden Eigenthums, insoferne sie nicht bloß als Uebertretung strafbar ist.
Accessories.	The extradition is also to take place for participation in any of the aforesaid crimes, as accessory either before or after the fact, provided such participation be punishable by the laws of both the Contracting Parties.	
Nature of offence for which extradition granted.	In all these cases the extradition will only take place from the Austro-Hungarian States when the crimes, if committed in Austria, would, according to Austrian law, constitute a " <i>Verbrechen</i> ," or, if committed in Hungary, would, according to the laws and customs being in force in Hungary, constitute a crime (" <i>buntett</i> "); the extradition from Great Britain only when the crimes, if committed in England, or within English jurisdiction, would constitute an extradition crime, as described in the Extradition Acts of 1870 and 1873.	
Subjects.	III.—In no case and on no grounds whatever shall the High Contracting Parties be held to concede the extradition of their own subjects.	
No extradition if person has been or is being tried.	IV.—The extradition shall not take place if the person claimed on the part of the Government of the United Kingdom, or the person claimed on the part of the Government of Austria-Hungary, has already been tried and discharged or punished, or is still under trial, in the Austro-Hungarian dominions, or in the United Kingdom respectively, for the crime for which his extradition is demanded.	
Where trial for another offence pending.	If the person claimed on the part of the Government of the United Kingdom, or if the person claimed on the part of the Government of Austria-Hungary, should be under examination for any other crime in the Austro-Hungarian dominions, or in the United Kingdom respectively, his extradition shall be	

deferred until the conclusion of the trial, and the full execution of any punishment awarded to him.

Austria-
Hungary.

Should an individual whose extradition is demanded be at litigation, or be detained in the country on account of private obligations, his surrender shall nevertheless be made, the injured party retaining the right to prosecute his claims before the competent authority.

Pendency of
civil proceedings.

V.—The extradition shall not take place if, with respect to the crime for which it is demanded, and according to the laws of the country applied to, criminal prosecution and punishment has lapsed.

No extradition
if offence
prescribed.

VI.—A fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded is one of a political character, or if he prove that the requisition for his surrender has, in fact, been made with a view to try or punish him for an offence of a political character.

Political offences.

VII.—If an individual whose extradition is demanded by either of the High Contracting Parties, in accordance with the terms of this Treaty, be also claimed by one or several other Powers on account of other crimes committed on their territory, he shall be surrendered to the Government in whose territory his gravest crime was committed; and if his crimes are all of the same gravity, or a doubt exists as to which is the gravest, to the Government which first made application for his surrender.

Claims by
several States.

VIII.—A surrendered person shall in no case be kept in arrest or subjected to examination in the State to which he has been surrendered on account of another previous crime, or any other grounds than those of his surrender, unless such person has, after his surrender, had an opportunity of returning to the country whence he was surrendered, and has not made use of this opportunity, or unless he, after having returned there, reappears in the country to which he has already been surrendered.

Trial after
extradition to
be limited to
extradition
offence.

This stipulation does not refer to crimes committed after surrender.

IX.—Requisitions for surrender shall be made by the Diplomatic Agents of the High Contracting Parties.

Requisitions.

To the requisition for the surrender of an accused person there must be attached a warrant issued by the competent authorities of the State which demands extradition, and such proofs as would, according to the laws of the place where the accused was found, justify his arrest if the crime had been committed there.

Arrest to be
justified by law
of extraditing
State,

<p><u>Austria-Hungary.</u></p>	<p>If the requisition refers to a person already convicted, the sentence passed by the competent tribunal of [the] State demanding his surrender must be produced.</p>
<p>evidence of conviction.</p>	<p>No requisition for surrender can be based on a conviction <i>in contumaciam</i>.</p>
<p>Arrest.</p>	<p>X.—If the requisition for extradition be in accordance with the foregoing stipulations, the competent authorities of the State applied to shall proceed to the arrest of the fugitive.</p>
<p>Procedure.</p>	<p>The prisoner is then to be brought before a competent Magistrate, who is to examine him and to conduct the preliminary investigation of the case, just as if the apprehension had taken place for a crime committed in the same country.</p>
<p>Warrants in urgent cases.</p>	<p>XI.—A fugitive criminal may, however, in urgent cases be arrested under a warrant of a Police Magistrate, Judge of the Peace, or of any other competent authority in either country, on such information or complaint, or such evidence as would, in the opinion of the person issuing the warrant, justify the issue of a warrant if the crime had been committed or the prisoner convicted in the district in which the authority happens to be.</p>
<p>Declaration of 26 June, 1901. [Formerly 14 days]</p>	<p>Provided, however, that he shall be discharged if, within the shortest time possible, and at the utmost within one month, a requisition for his surrender in accordance with the terms of Article IX of this Treaty be not made by the Diplomatic Representative of the State which requests his extradition.</p>
<p>Evidence to justify committal for trial in extraditing State.</p>	<p>XII.—The extradition shall not take place before the expiration of 15 days from the apprehension, and then only if the evidence be found sufficient, according to the laws of the State applied to, either to justify the committal of the prisoner for trial, in case the crime had been committed in the territory of the said State, or to prove that the prisoner is the identical person convicted by the Courts of the State which makes the requisition.</p>
<p>Evidence taken in claiming State to be admitted.</p>	<p>XIII.—In the examinations which they have to make in accordance with the foregoing stipulations, the authorities of the State applied to shall admit as entirely valid evidence the sworn depositions or statements of witnesses taken in the other State, or copies thereof, and likewise the warrants and sentences issued therein, provided such documents are signed or certified by a Judge, Magistrate, or officer of such State, and are authenticated by the oath of some witness, or by being sealed with the official seal of the Minister of Justice, or some other Minister of State.</p>
<p>Authentication of documents.</p>	

XIV.—If sufficient evidence for the extradition be not produced within two months from the date of the apprehension of the fugitive, he shall be set at liberty.

Austria-
Hungary.

XV.—All articles seized, which were in the possession of the person to be surrendered at the time of his apprehension, shall, if the competent authority of the State applied to for extradition has ordered the delivery thereof, be given up when the extradition takes place; and this delivery shall extend not only to property of the accused, and to the stolen articles, but also to everything which may serve as a proof of the crime. If the extradition cannot be carried out in consequence of the flight or death of the individual who is claimed, the delivery of the above-mentioned objects shall take place nevertheless.

Delay for
presenting
evidence.

Articles seized.

XVI.—Each of the Contracting Parties shall defray the expenses occasioned by the arrest within its territories, the detention, and the conveyance to its frontier, of the persons to be surrendered, in pursuance of this Treaty.

Expenses.

XVII.—The stipulations of the present Treaty shall be applicable to the Colonies and foreign possessions of Her Britannic Majesty.

The requisition for the surrender of a fugitive criminal who has taken refuge in any of such Colonies or foreign possessions shall be made to the Governor or chief authority of such Colony or possession by the chief Consular Officer of Austria-Hungary in such Colony or possession.

Extradition by
British Colonies.

Such requisitions may be disposed of, subject always, as nearly as may be, to the provisions of this Treaty, by the said Governor or chief authority, who, however, shall be at liberty either to grant the surrender or to refer the matter to his Government

Her Britannic Majesty shall, however, be at liberty to make special arrangements in the British Colonies and foreign possessions for the surrender of Austro-Hungarian criminals, who may take refuge within such Colonies and foreign possessions, on the basis as nearly as may be, of the provisions of the present Treaty.

The requisition for the surrender of a fugitive criminal from any Colony or foreign possession of Her Britannic Majesty shall be governed by the rules laid down in the preceding Articles of the present Treaty.

Extradition to
British Colonies.

XVIII.—The present Treaty shall come into force 10 days after its publication, in conformity with the forms prescribed by the laws of the High Contracting Parties. It may be terminated

Coming into
force of Treaty.

Austria-
Hungary.

by either of the High Contracting Parties, but shall remain in force for 6 months after notice has been given for its termination.

The Treaty shall be ratified, and the ratifications shall be exchanged at Vienna as soon as possible.

BELGIUM.

[Treaty, 29th October, 1901.

O. in C. 6th March, 1902. Acts in force from 17th March, 1902.

Supplementary Convention, 5th March, 1907.]

Agreement to
extradite.

I.—It is agreed that His Britannic Majesty and His Majesty the King of the Belgians shall, on requisition made in their name by their respective Diplomatic Agents, deliver up to each other reciprocally, under the circumstances and conditions stated in the present Treaty, any persons who, being accused or convicted, as principals or accessories, of any of the crimes hereinafter specified, committed within the territories of the requiring Party, shall be found within the territories of the other Party:—

Extradition
offences.

1. Murder (including assassination, parricide, infanticide, poisoning), or attempt or conspiracy to murder, in cases jointly* provided for by the laws of the two countries.

1. Meurtre (y compris l'assassinat, le parricide, l'infanticide, l'empoisonnement), ou tentative de meurtre ou complot en vue de meurtre dans les cas prévus simultanément par la législation des deux pays.

2. Administering drugs or using instruments with intent to procure the miscarriage of women.

2. Administration de drogues ou usage d'instruments en vue de provoquer l'avortement.

3. Manslaughter.

3. Homicide commis sans préméditation ou guet-apens.

4. Bigamy.

4. Bigamie.

5.—(a) Counterfeiting or altering money, or uttering counterfeit or altered money.

5.—(a) Contrefaçon ou altération de monnaie, ainsi que mise en circulation de la monnaie contrefaite ou altérée.

(b) Knowingly making, without lawful authority, any instrument, tool, or engine adapted

(b) Avoir fabriqué sciemment, sans compétence légale un instrument, outil, ou engin

* [*sic*: read "alike"].

and intended for the counterfeiting of the coin of the realm.

6. Abandoning children, exposing or unlawfully detaining them.

7. Forgery, counterfeiting, or altering or uttering what is forged, or counterfeited or altered.

8. Any malicious act done with intent to endanger persons in a railway train.

9. Embezzlement or larceny.

10. Receiving any chattel, money, valuable security, or other property, knowing the same to have been embezzled, stolen, or feloniously obtained.

11. Obtaining money, goods, or valuable securities by false pretences.

12. Crimes by bankrupts against bankruptcy law.

13. Fraud by a bailee, banker, agent, factor, trustee, or director, or member or public officer of any company, made criminal by any law for the time being in force.

14. Rape.

Carnal knowledge, or any attempt to have carnal knowledge, of a girl under 16 years

propre à contrefaire la monnaie du Royaume, et destiné à ce but.

6. Délaissement, exposition, ou recel d'enfants.

7. Faux, contrefaçon, ou altération, ou mise en circulation de ce qui est falsifié, contrefait, ou altéré.

8. Toute acte punissable commis avec l'intention méchante de mettre en danger des personnes se trouvant dans un train de chemin de fer.

9. Soustraction frauduleuse ou vol.

10. Recèlement frauduleux d'argent, valeur ou objets mobiliers provenant d'escroquerie, vol, ou détournement.

11. Escroquerie d'argent de marchandises, ou valeurs, sous de faux prétextes.

12. Crimes des banqueroutiers frauduleux prévus par la loi.

13. Détournement ou dissipation frauduleux au préjudice d'autrui d'effets, deniers, marchandises, quittances, écrits de toute nature, contenant ou opérant obligation ou décharge, et qui avaient été remis à la condition de les rendre ou d'en faire un usage ou un emploi déterminé.

14. Viol.

Commerce sexual, ou tentative de commerce sexual, avec une fille âgée de moins de 16

Belgium.

Belgium.

of age, so far as such acts are punishable by the law of the State upon which the demand is made.

Indecent assault. Indecent assault without violence upon children of either sex under 13 years of age.

15. Abduction.

16. Child-stealing.

17. Kidnapping and false imprisonment.

18. Burglary or housebreaking.

19. Arson.

20. Robbery with violence (including intimidation).

21. Threats by letter or otherwise, with intent to extort.

22. Piracy by [the] law of nations.

23. Sinking or destroying a vessel at sea, or attempting or conspiring to do so.

24. Assaults on board a ship on the high seas with intent to destroy life or to do grievous bodily harm.

25. Revolt, or conspiracy to revolt, by two or more persons on board a ship on the high seas against the authority of the master.

ans, en tant que ces actes sont punissables par la loi de l'État auquel la demande est adressée.

Attentat à la pudeur avec violences ou menaces. Attentat à la pudeur sans violences ni menaces sur des enfants de l'un ou de l'autre sexe, âgés de moins de 13 ans.

15. Enlèvement de mineurs.

16. Enlèvement d'enfant.

17. Attentats à la liberté individuelle pour autant que les lois des deux pays permettent l'extradition de ce chef.

18. Vol avec effraction ou escalade.

19. Incendie.

20. Vol avec violence (comprenant l'intimidation).

21. Menaces d'attentat punissable d'une peine criminelle.

22. Prise d'un navire par les marins ou passagers par fraude ou violence envers le capitaine.

23. Échouement, perte, destruction, ou tentative d'échouement, de perte, ou de destruction d'un navire à la mer par le capitaine ou les officiers et gens de l'équipage.

24. Attaque ou résistance à bord d'un navire en haute mer avec violence et voies de fait envers le capitaine par plus du tiers de l'équipage.

25. Révolte ou complot de révolte par deux ou plusieurs personnes à bord d'un navire en haute mer, contre l'autorité du capitaine.

26. Perjury and subornation of perjury.

27. Malicious injury to property, if the offence be indictable.

28. Assault occasioning actual bodily harm. Malicious wounding or inflicting grievous bodily harm.

29. Offences in connection with the slave trade punishable by the laws of both States.

26. Faux serment, faux témoignage, et subornation de témoins.

27. Destruction ou dégradation de constructions, machines, plantations, récoltes, instruments d'agriculture, appareils télégraphiques, ouvrages d'art, navires, tombeaux; dommages causés volontairement au bétail et à la propriété mobilière, délits qui sont réprimés en Angleterre sous le nom de "*malicious injury to property.*"

28. Coups portés ou blessures faites volontairement avec préméditation ou ayant causé une maladie paraissant incurable, une incapacité permanente de travail personnel, la perte de l'usage absolu d'un organe ou une mutilation grave.

29. Crimes ou délits concernant la traite des esclaves en tant qu'ils sont punissables d'après les lois des deux pays.

Belgium.

Provided the surrender shall be made only when, in the case of a person accused, the commission of the crime shall be so established as that the laws of the country where the fugitive or person accused shall be found would justify his apprehension and commitment for trial if the crime had been there committed, and in the case of a person alleged to have been convicted, on such evidence as, according to the laws of the country where he is found, would prove that he had been convicted.

Arrest and committal for trial to be justified by law of extraditing State.

In no case can the surrender be made unless the crime shall be punishable according to the laws in force in both countries with regard to extradition.

Crime to be punishable in both States.

In no case, nor on any consideration whatever, shall the High Contracting Parties be bound to surrender their own subjects, whether by birth or naturalization.

Subjects.

Belgium.

Proceedings on
requisitions in
the United
Kingdom.
Accused persons.

II.—In the dominions of His Britannic Majesty, other than the Colonies or foreign possessions of His Majesty, the manner of proceeding shall be as follows:—

i. In the case of a person accused—

The requisition for the surrender shall be made to His Britannic Majesty's Principal Secretary of State for Foreign Affairs by the Minister or other Diplomatic Agent of His Majesty the King of the Belgians, accompanied by a warrant of arrest or other equivalent judicial document issued by a Judge or Magistrate duly authorized to take cognizance of the acts charged against the accused in Belgium, together with duly authenticated depositions or statements taken on oath or upon solemn affirmation before such Judge or Magistrate, clearly setting forth the said acts, and containing a description of the person claimed, and any particulars which may serve to identify him.

The said Secretary of State shall transmit such documents to His Britannic Majesty's Principal Secretary of State for the Home Department, who shall then, by order under his hand and seal, signify to some Police Magistrate in London that such requisition has been made, and require him, if there be due cause, to issue his warrant for the apprehension of the fugitive.

Arrest to be
justified by
English law.

On the receipt of such order from the Secretary of State, and on the production of such evidence as would, in the opinion of the Magistrate, justify the issue of the warrant if the crime had been committed in the United Kingdom, he shall issue his warrant accordingly.

Evidence to
justify committal
for trial in
England.

When the fugitive shall have been apprehended, he shall be brought before a competent Magistrate. If the evidence to be then produced shall be such as to justify, according to the law of England, the committal for trial of the prisoner, if the crime of which he is accused had been committed in England, the Magistrate shall commit him to prison to await the warrant of the Secretary of State for his surrender, sending immediately to the Secretary of State a certificate of the committal and a report upon the case.

After the expiration of a period from the committal of the prisoner, which shall never be less than 15 days, the Secretary of State shall, by order under his hand and seal, order the fugitive criminal to be surrendered to such person as may be duly authorized to receive him on the part of the Government of His Majesty the King of the Belgians.

ii. In the case of a person convicted—

Belgium.

The course of proceeding shall be the same as in the case of a person accused, except that the warrant to be transmitted by the Minister or other Diplomatic Agent in support of his requisition shall clearly set forth the crime of which the person claimed has been convicted, and state the fact, place, and date of his conviction. The evidence to be produced before the Magistrate shall be such as would, according to the law of England, prove that the prisoner was convicted of the crime charged.

Convicted persons.

After the Magistrate shall have committed the accused or convicted person to prison to await the order of a Secretary of State for his surrender, such person shall have the right to apply for a writ of *habeas corpus*; if he should so apply, his surrender must be deferred until after the decision of the Court upon the return to the writ, and even then can only take place if the decision is adverse to the applicant.

Habeas corpus.

III.—In the dominions of His Majesty the King of the Belgians, other than the Colonies or foreign possessions of his said Majesty, the manner of proceeding shall be as follows:—

Procedure on requisitions in Belgium.

i. In the case of a person accused—

Accused persons.

The requisition for the surrender shall be made to the Minister for Foreign Affairs of His Majesty the King of the Belgians by the Minister or other Diplomatic Agent of His Britannic Majesty, accompanied by a warrant of arrest or other equivalent judicial document issued by a Judge or Magistrate duly authorised to take cognizance of the acts charged against the accused in Great Britain, together with duly authenticated depositions or statements taken on oath or upon solemn affirmation before such Judge or Magistrate, clearly setting forth the said acts, and containing a description of the person claimed, and any other particulars which may serve to identify him.

The Minister for Foreign Affairs shall transmit the warrant of arrest, with the documents thereto annexed, to the Minister of Justice, who shall forward the same to the proper judicial authority, in order that the warrant of arrest may be put in course of execution by the Chamber of the Council (*Chambre du Conseil*) of the Court of First Instance of the place of residence of the accused, or of the place where he may be found.

The foreigner may claim to be provisionally set at liberty in any case in which a Belgian enjoys that right, and under the same conditions.

Provisional release according to Belgian law.

Belgium.

The application shall be submitted to the Chamber of the Council (*Chambre du Conseil*).

The Government will take the opinion of the Chamber of Indictment or Investigation (*Chambre des Mises en Accusation*) of the Court of Appeal within whose jurisdiction the foreigner shall have been arrested.

The hearing of the case shall be public, unless the foreigner should demand that it should be with closed doors.

The public authorities and the foreigner shall be heard. The latter may obtain the assistance of counsel.

Within a fortnight from the receipt of the documents they shall be returned with a reasoned opinion*, to the Minister of Justice, who shall decide† and may order that the accused be delivered to the person duly authorised on the part of the Government of His Britannic Majesty.

* ["*avis motivé*"].
 † ["*statuera*"]
of Chap. VII.
 Sec. XII, p. 265].

Convicted persons.

ii. In case of a person convicted—

The course of proceeding shall be the same as in the case of a person accused, except that the conviction or sentence of condemnation issued in original, or in an authenticated copy, to be transmitted by the Minister or other Diplomatic Agent in support of his requisition, shall clearly set forth the crime of which the person claimed has been convicted, and state the fact, place, and date of his conviction. The evidence to be produced shall be such as would, according to the Belgian laws, prove that the prisoner was convicted of the crime charged.

Procedure by warrant.

IV.—A fugitive criminal may, however, be apprehended under a warrant signed by any Police Magistrate, Justice of the Peace, or other competent authority in either country, on such information or complaint, and such evidence, or after such proceedings as would, in the opinion of the person issuing the warrant justify the issue of a warrant if the crime had been committed or the prisoner convicted in that part of the dominions of the two Contracting Parties in which he exercises jurisdiction: Provided, however, that, in the United Kingdom, the accused shall, in such case, be sent as speedily as possible before a competent Magistrate. He shall be discharged, as well in the United Kingdom as in Belgium, if within 14 days a requisition shall not have been made for his surrender by the Diplomatic Agent of the requiring State in the manner directed by Articles II and III of this Treaty.

Delay for pre-empting requisition.

High sea offences.

The same rule shall apply to the cases of persons accused or convicted of any of the crimes specified in this Treaty, and

committed on the high seas on board any vessel of either country which may come into a port of the other. Belgium.

V.—If within 2 months, counting from the date of arrest, sufficient evidence for the extradition shall not have been presented, the person arrested shall be set at liberty. He shall likewise be set at liberty if, within 2 months of the day on which he was placed at the disposal of the Diplomatic Agent, he shall not have been sent off* to the reclaiming country. Delay for presenting evidence: and for removal of fugitive.

VI.—When any person shall have been surrendered by either of the High Contracting Parties to the other, such person shall not, until he has been restored, or had an opportunity of returning to the country from whence he was surrendered, be triable or tried for any offence committed in the other country prior to the surrender, other than the particular offence on account of which he was surrendered. * ["*emmené*"].
Trial after surrender to be limited to extradition offence.

VII.—No accused or convicted person shall be surrendered if the offence in respect of which his surrender is demanded shall be deemed by the Party upon which it is made to be a political offence, or to be an act connected with (*connexe à*) such an offence, or if he prove to the satisfaction of the Magistrate, or of the Court before which he is brought on *habeas corpus*, or to the Secretary of State, that the requisition for his surrender has in fact been made with a view to try or to punish him for an offence of a political character. Political offences.

VIII.—Warrants, depositions, or statements on oath issued or taken in the dominions of either of the two High Contracting Parties, and copies thereof, and certificates of or judicial documents stating the fact of conviction, shall be received in evidence in proceedings in the dominions of the other, if purporting to be signed or certified by a Judge, Magistrate, or officer of the country where they were issued or taken: Evidence taken in claiming State to be admitted.

Provided such warrants, depositions, statements, copies, certificates, and judicial documents are authenticated by the oath or solemn affirmation of some witness, or by being sealed with the official seal of the Minister of Justice, or some other Minister of State. Authentication of documents.

IX.—The surrender shall not take place if, since the commission of the acts charged, the accusation, or the conviction, exemption from prosecution or punishment has been acquired by lapse of time, according to the laws of the country where the accused shall have taken refuge. No extradition if offence prescribed.

Belgium.	X.—If the individual claimed by one of the two High Contracting Parties in pursuance of the present Treaty should be also claimed by one or several other Powers, on account of other crimes committed upon their respective territories, his surrender shall be granted to that State whose demand is earliest in date; unless any other arrangement should be made between the Governments which have claimed him, either on account of the gravity of the crimes committed, or for any other reasons.
Claims by several States.	XI.—If the individual claimed should be under process,§ or condemned by the Courts of the country where he has taken refuge, his surrender may be deferred until he shall have been set at liberty in due course of law.
No extradition if person has been or is being tried.	In case he should be proceeded against or detained in such country on account of obligations contracted towards private individuals, his surrender shall, nevertheless, take place, the injured party retaining his right to prosecute his claims before the competent authority.
Pendency of civil proceedings.	XII.—Every article found in the possession of the individual claimed at the time of his arrest shall, if the competent authority so decide, be seized, in order to be delivered up with his person at the time when the surrender shall be made. Such delivery shall not be limited to the property or articles obtained by stealing or by fraudulent bankruptcy, but shall extend to everything that may serve as proof of the crime.† It shall take place even when the surrender, after having been ordered, shall be prevented from taking place by reason of the escape or death of the individual claimed.
Articles seized.	The rights of third parties with regard to the said property or articles are, nevertheless, reserved.
Expenses.	XIII.—Each of the High Contracting Parties shall defray the expenses occasioned by the arrest within its territories, the detention, and the conveyance to its frontier, of the persons whom it may consent to surrender in pursuance of the present Treaty.
Extradition to and from Colonies.	XIV.—The stipulations of the present Treaty shall be applicable to the Colonies and foreign possessions of the two High Contracting Parties.
	The requisition for the surrender of a fugitive criminal who has taken refuge in a Colony or foreign possession of either Party

§ [This should read, "is being prosecuted"; civil process is dealt with in the 2d paragraph: *cf.* Chap. V, Sec. VI.]

† ["Toute chose qui pourrait servir de pièce de conviction."]

shall be made to the Governor or chief authority of such Colony or possession by the chief Consular Officer of the other in such Colony or possession; or, if the fugitive has escaped from a Colony or foreign possession of the Party on whose behalf the requisition is made, by the Governor or chief authority of such Colony or possession.

Belgium.

Such requisitions may be disposed of, subject always, as nearly as may be, to the provisions of this Treaty, by the respective Governors or chief authorities, who, however, shall be at liberty either to grant the surrender or to refer the matter to their Government.

His Britannic Majesty shall, however, be at liberty to make special arrangements in the British Colonies and foreign possessions for the surrender of Belgian criminals who may there take refuge, on the basis, as nearly as may be, of the provisions of the present Treaty.

British Colonies.

1. A fugitive criminal arrested under the terms of Article IV shall be discharged in the dominions of His Britannic Majesty if, within the period of 2 months from the date of his arrest, a request for his extradition shall not have been made by the Government of the requisitioning State.

Supplementary Convention, 5 March, 1907.

Delay for presenting requisition, where arrest by warrant.

The fugitive criminal may be discharged in the dominions of His Majesty the King of the Belgians if within the same period a request for his extradition has not been made by the Government of the requisitioning State: he shall be released if within 7 days following the expiration of this period the warrant issued by the competent authority shall not have been communicated to the fugitive criminal.

[cf. Art. IV, p. 46].

2. The person arrested shall be set at liberty if, within [the] 3 months, counting from the date of arrest, sufficient evidence in support of the demand for extradition shall not have been produced.

XV.—The present Treaty shall come into operation 10 days after its publication, in conformity with the laws of the respective countries.

From the day when the present Treaty shall come into force, the Treaty of Extradition between the two countries of 20th May, 1876; the Declaration between the British and Belgian Governments, dated 23rd July, 1877, extending the Treaty of 20th May, 1876, to certain additional crimes; the further

Repeal of former Treaties.

Belgium. Declaration of 21st April, 1887, amending Article I of the Treaty of 20th May, 1876; and the Convention of 27th August, 1896, further amending the Treaty of 20th May, 1876, shall all cease to have effect; but the present Treaty shall apply to all crimes within the Treaty, whether committed before or after the day when it comes into force.

Either Party may at any time terminate the Treaty on giving to the other 6 months' notice of its intention.

XVI.—The present Treaty shall be ratified, and the ratifications shall be exchanged at Brussels, as soon as may be within 6 weeks from the date of signature.

BOLIVIA.

[Treaty, 22nd February, 1892. O. in C. 23th October, 1898.
Acts in force from 4th November, 1898.]

Agreement to
extradite.

I.—The High Contracting Parties engage to deliver up to each other, under certain circumstances and conditions stated in the present Treaty, those persons who, being accused or convicted of any of the crimes or offences enumerated in Article II, committed in the territory of the one Party, shall be found within the territory of the other Party.

Extradition
offences.

II.—Extradition shall be reciprocally granted for the following crimes or offences:—

1. Murder (including assassination, parricide, infanticide, poisoning), or attempt or conspiracy to murder.

2. Manslaughter.

3. Administering drugs or using instruments with intent to procure the miscarriage of women.

4. Rape.

5. Carnal knowledge or any attempt to have carnal knowledge of a girl under 16 years of age, if the evidence produced

1. Asesinato (incluso el asesinato con violencia, parricidio, infanticidio, ó envenenamiento), ó la tentativa ó conspiracion para asesinar.

2. Homicidio.

3. La administracion de drogas ó el empleo de instrumentos con el proposito de procurar el aborto.

4. Estupro.

5. Conocimiento carnal ó las tentativas de tenerlo con una niña menor de diez y seis años, siempre que el testimonio

justifies committal for those crimes according to the laws of both the High Contracting Parties.

6. Indecent assault.
7. Kidnapping and false imprisonment, child-stealing.
8. Abduction.
9. Bigamy.
10. Maliciously wounding or inflicting grievous bodily harm.
11. Assault occasioning actual bodily harm.
12. Threats, by letter or otherwise, with intent to extort money or other things of value.
13. Perjury, or subornation of perjury.
14. Arson.
15. Burglary or house-breaking, robbery with violence, larceny, or embezzlement.
16. Fraud by a bailee, banker, agent, factor, trustee, director, member, or public officer of any company, punishable with imprisonment for not less than one year by any law for the time being in force.
17. Obtaining money, valuable security, or goods by false pretences; receiving any money, valuable security, or other property, knowing the same to have been stolen or unlawfully obtained.

aducido justifique el enjuiciamiento por esos crímenes, según las leyes de las dos Altas Partes Contratantes.

6. Atentado contra el pudor.
7. Robo y secuestro de un ser humano, sustracción de niño.
8. Rapto.
9. Bigamia.
10. Lesiones ó daño corporal grave hecho intencionalmente.
11. Ataque á las personas del que resulte grave daño corporal.
12. Amenazas, ya sea por medio de cartas ó de otra manera, con la intención de sacar dinero ú otros objetos de valor.
13. Perjurio, ó tentativas de conseguirlo.
14. Incendio voluntario.
15. Robo, ú otros crímenes ó sus tentativas cometidas con fractura, robo con violencia, hurto y malversación de valores públicos ó particulares.
16. Fraude cometido por un depositario, banquero, agente, comisionado, fideicomisario, director, miembro, ó empleado público de cualquiera Compañía, siempre que sea considerado como crimen con pena no menor de un año de prisión por una ley que esté en vigencia.
17. El obtener dinero, garantías de valor, ó mercaderías, con pretextos falsos; recibir dinero, garantías de valor ú otros bienes, sabiendo que han sido robados ó habidos indebidamente.

Bolivia.

Bolivia.

18.—(a) Counterfeiting or altering money, or bringing into circulation counterfeited or altered money.

(b) Knowingly making without lawful authority any instrument, tool, or engine adapted and intended for the counterfeiting of the coin of the realm.

(c) Forgery, or uttering what is forged.

19. Crimes against bankruptcy law.

20. Any malicious act done with intent to endanger the safety of any person travelling or being upon a railway.

21. Malicious injury to property, if such offence be indictable.

22. Piracy, and other crimes or offences committed at sea against persons or things which, according to the laws of the High Contracting Parties, are extradition offences, and are punishable by more than one year's imprisonment.

23. Dealing in slaves in such manner as to constitute a criminal offence against the laws of both States.

Accessories.

The extradition is also to be granted for participation in any of the aforesaid crimes, provided such participation be punishable by the laws of both High Contracting Parties.

Other offences.

Extradition may also be granted at the discretion of the State applied to in respect of any other crime for which, according to

18.—(a) Falsificacion ó alteracion de moneda, circulacion de moneda falsificada ó alterada.

(b) Fabricacion á sabiendas y sin autorizacion legal de cualquier instrumento, herramienta, ó aparato adaptado y destinado á la falsificacion de la moneda nacional.

(c) Falsificacion ó alteracion de firmas ó valores, ó circulacion de lo falsificado ó alterado.

19. Crimenes contra las leyes de bancarrota.

20. Cualquier acto hecho con intencion criminal, y que tenga por objeto poner en peligro la seguridad de una persona que se encuentre viajando en un ferrocarril, ó que se halle en él.

21. Daño á la propiedad hecho con intencion criminal, siempre que la ofensa sea procesable.

22. Pirateria, y otros crimenes ó delitos cometidos en el mar sobre las personas ó sobre las cosas, y que, segun las leyes respectivas de las dos Altas Partes Contratantes, sean delitos de extradicion y tengan mas de un año de pena.

23. Trata de esclavos, de manera tal que constituya una ofensa criminal contra las leyes de ambos Estados.

the laws of both the High Contracting Parties for the time being in force, the grant can be made. Bolivia.

III.—Either Government reserves the right to refuse or grant the surrender of its own subjects or citizens to the other Government. Subjects.

IV.—The extradition shall not take place if the person claimed on the part of Her Majesty's Government, or the person claimed on the part of the Government of Bolivia, has already been tried and discharged or punished, or is still under trial in the territory of the Republic of Bolivia or in the United Kingdom respectively for the crime for which his extradition is demanded. No extradition if person has been or is being tried.

If the person claimed on the part of Her Majesty's Government, or on the part of the Government of Bolivia, should be under examination for any other crime in the territory of the Republic of Bolivia or in the United Kingdom respectively, his extradition shall be deferred until the conclusion of the trial, and the full execution of any punishment awarded to him. Trial for another offence pending, surrender postponed.

V.—The extradition shall not take place if, subsequently to the commission of the crime, or the institution of the penal prosecution or the conviction thereon, exemption from prosecution or punishment has been acquired by lapse of time, according to the laws of the State applying or applied to. No extradition if offence prescribed.

It shall likewise not take place when, according to the laws of either country, the maximum punishment for the offence is imprisonment for less than one year. Degree of extraditable offence.

VI.—A fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded is one of a political character, or if he prove that the requisition for his surrender has, in fact, been made with a view to try or punish him for an offence of a political character. Political offences.

VII.—A person surrendered can in no case be kept in prison or be brought to trial in the State to which the surrender has been made, for any other crime, or on account of any other matters, than those for which the extradition shall have taken place, until he has been restored, or has had an opportunity of returning, to the State by which he has been surrendered. Trial after surrender to be limited to extradition offence.

This stipulation does not apply to crimes committed after the extradition.

VIII.—The requisition for extradition shall be made through the Diplomatic Agents of the High Contracting Parties respectively. Requisition.

The requisition for the extradition of an accused person must be accompanied by a warrant of arrest issued by the competent

<p>Bolivia.</p> <hr/> <p>Arrest to be justified by law of extraditing State; evidence of conviction.</p>	<p>authority of the State requiring the extradition, and by such evidence as, according to the laws of the place where the accused is found, would justify his arrest if the crime had been committed there.</p> <p>If the requisition relates to a person already convicted, it must be accompanied by the sentence of condemnation passed against the convicted person by the competent Court of the State that makes the requisition for extradition.</p> <p>A sentence passed <i>in contumaciam</i> is not to be deemed a conviction, but a person so sentenced may be dealt with as an accused person.</p>
<p>Procedure.</p>	<p>IX.—If the requisition for extradition be in accordance with the foregoing stipulations, the competent authorities of the State applied to shall proceed to the arrest of the fugitive.</p> <p>X.—A fugitive criminal may be apprehended under a warrant issued by any Police Magistrate, Justice of the Peace, or other competent authority in either country, on such information or complaint, and such evidence, or after such proceedings, as would, in the opinion of the authority issuing the warrant, justify the issue of a warrant if the crime had been committed or the person convicted in that part of the dominions of the two Contracting Parties in which the Magistrate, Justice of the Peace, or other competent authority exercises jurisdiction; provided, however, that in the United Kingdom the accused shall, in such case, be sent as speedily as possible before a Police Magistrate in London. He shall, in accordance with this Article, be discharged, as well in the Republic of Bolivia as in the United Kingdom, if within the term of 60 days a requisition for extradition shall not have been made by the Diplomatic Agent of his country in accordance with the stipulations of this Treaty. The same rule shall apply to the cases of persons accused or convicted of any of the crimes or offences specified in this Treaty, and committed on the high seas on board any vessel of either country which may come into a port of the other.</p>
<p>Delay for presenting requisition.</p>	
<p>High sea offences.</p>	
<p>Evidence to justify committal for trial in extraditing State.</p>	<p>XI.—The extradition shall take place only if the evidence be found sufficient, according to the laws of the State applied to, either to justify the committal of the prisoner for trial, in case the crime had been committed in the territory of the same State, or to prove that the prisoner is the identical person convicted by the Courts of the State which makes the requisition, and that the crime of which he has been convicted is one in</p>

respect of which extradition could, at the time of such conviction, have been granted by the State applied to; and no criminal shall be surrendered until after the expiration of 15 days from the date of his committal to prison to await the warrant for his surrender.

Bolivia.

XII.—In the examinations which they have to make in accordance with the foregoing stipulations, the authorities of the State applied to shall admit as valid evidence the sworn depositions or statements of witnesses taken in the other State, or copies thereof, and likewise the warrants and sentences issued therein, and certificates of, or judicial documents stating the fact of a conviction, provided the same are authenticated as follows:—

Evidence taken in claiming State to be admitted.

i. A warrant must purport to be signed by a Judge, Magistrate, or officer of the other State.

Authentication of documents.

ii. Depositions, or affirmations, or the copies thereof, must purport to be certified, under the hand of a Judge, Magistrate, or officer of the other State, to be the original depositions or affirmations, or to be true copies thereof, as the case may require.

iii. A certificate of, or judicial document stating, the fact of a conviction must purport to be certified by a Judge, Magistrate, or officer of the other State.

iv. In every case such warrant, deposition, affirmation, copy, certificate, or judicial document must be authenticated either by the oath of some witness, or by being sealed with the official seal of the Minister of Justice, or some other Minister of the other State; but any other mode of authentication for the time being permitted by the law of the country where the examination is taken may be substituted for the foregoing.

XIII.—If the individual claimed by one of the High Contracting Parties in pursuance of the present Treaty should be also claimed by one or several other Powers on account of other crimes or offences committed upon their respective territories, his extradition shall be granted to that State whose demand is earliest in date.

Claims by several States.

XIV.—If sufficient evidence for the extradition be not produced within 2 months from the date of the apprehension of the fugitive, or within such further time as the State applied to, or the proper tribunal thereof, shall direct, the fugitive shall be set at liberty.

Delay for presenting evidence.

XV.—All articles seized which were in the possession of the person to be surrendered at the time of his apprehension shall, if

Articles seized.

Bolivia. the competent authority of the State applied to for the extradition has ordered the delivery of such articles, be given up when the extradition takes place; and the said delivery shall extend not merely to the stolen articles, but to everything that may serve as a proof of the crime.

Expenses. XVI.—All expenses connected with extradition shall be borne by the demanding State.

XVII.—The stipulations of the present Treaty shall be applicable to the Colonies and foreign possessions of Her Britannic Majesty, so far as the laws for the time being in force in such Colonies and foreign possessions respectively will allow.

Extradition by British Colonies. The requisition for the surrender of a fugitive criminal, who has taken refuge in any of such Colonies or foreign possessions, shall be made to the Governor or chief authority of such Colony or possession by the chief Consular Officer of the Republic of Bolivia in such Colony or possession.

Such requisition may be disposed of, subject always, as nearly as may be, and so far as the law of such Colony or foreign possession will allow, to the provisions of this Treaty, by the said Governor or chief authority, who, however, shall be at liberty either to grant the surrender or to refer the matter to his Government.

Her Britannic Majesty shall, however, be at liberty to make special arrangements in the British Colonies and foreign possessions for the surrender of Bolivian criminals who may take refuge within such Colonies and foreign possessions, on the basis, so far as the law of such Colony or foreign possession will allow, of the provisions of the present Treaty.

Extradition to British Colonies. Requisitions for the surrender of a fugitive criminal emanating from any Colony or foreign possession of Her Britannic Majesty shall be governed by [the] rules laid down in the preceding Articles of the present Treaty.

XVIII.—The present Treaty shall come into force 10 days after its publication, in conformity with the forms prescribed by the laws of the High Contracting Parties. It may be terminated by either of the High Contracting Parties by a notice not exceeding one year, and not less than 6 months.

The Treaty, after receiving the approval of the Congress of the Republic of Bolivia, shall be ratified, and the ratifications shall be exchanged at Lima as soon as possible.

BRAZIL.

Brazil.

[Treaty, 13th November, 1872.
 Protocol, 13th November, 1872. O. in C. 20th November, 1873.
 Acts in force from 1st December, 1873.]

I.—The High Contracting Parties engage to deliver up, ^{Agreement to extradite.} reciprocally, those persons who, being accused or convicted of having committed crime in the territory of the one Party, shall be found within the territory of the other, under the circumstances and conditions that are laid down in the present Treaty.

II.—The crimes for which the extradition shall be granted ^{Extradition offences.} are the following:—

1. Murder, or attempt to murder.

1. Homicidio sujeito á pena de morte ('murder'), e tentativa d'elle.

[Attempts at infanticide, struck out by Declaration of even date with the Treaty].

cf. p. 62.

2. Manslaughter.

2. Homicidio ('manslaughter').

3. Illegal fabrication, counterfeiting, or falsification, uttering or bringing into circulation counterfeit or falsified money.

3. Fabricação illegal, contrafacção ou falsificação de moeda, emittir ou introduzir na circulação moeda contrafeita ou falsificada.

4. Forgery, or imitation, counterfeiting or falsification, of any document or paper, comprising the crimes designated in the Criminal Code of Brazil as imitation, counterfeiting, or falsification of paper money, notes of banks, or other securities public or private, as well as the intentional use or the bringing into circulation of any papers imitated, counterfeited, or falsified.

4. O crime de falsidade, ou imitação, contrafacção, ou falsificação de qualquer documento ou papel, comprehendose os crimes designados na lei criminal do Brazil, de imitação, contrafacção, ou falsificação do papel moeda, notas dos bancos, ou outros titulos publicos ou particulares; assim como o uso premeditado ou introduccção na circulação de quaesquer papies imitados contrafeitos ou falsificados.

5. The purloining, or embezzlement, of moneys or effects, public or private, by abuse of confidence.

5. Subtracção, ou extravio, de dinheiros ou valores publicos ou particulares, com abuso da confiança.

Brazil.

6. Frauds, or false or fraudulent pretences, to obtain moneys or effects from another.

7. Bankruptcies† subject to criminal prosecution, according to the laws applicable thereunto.

8. Malversation, or fraud, committed by a bailee, banker, agent, factor, trustee, or director, or member, or officer, of any company, made criminal by any law in force.

9. Rape, by force or threats.

10. Abduction.

11. Child-stealing.

12. House-breaking, with intent to steal, or to commit other crimes.

13. Crimes resulting from the act of wilfully setting fire to a house, or to buildings connected therewith, to the prejudice of another.

14. Robbery with violence.

15. Piracy according to the law of nations.

16. Sinking or destroying a vessel on the high seas, or the attempt to perpetrate such acts.

17. Crimes arising from assault on board a ship on the high seas, with intent to cause death, or grievous bodily injuries.

6. Artificios, ou pretextos falsos ou fraudulentos, para aquisição de dinheiros ou valores de outrem.

7. Crimes de banca rota sujeitos ao processo criminal na forma das leis que lhes são applicaveis.

8. Malversação ou fraude commettida por depositario, banqueiro, agente, corrector, curador, director, membro, ou empregado de alguma companhia, considerada crime por lei em vigor.

9. Defloraçào ou violaçào ('rape') por violencia ou ameaças.

10. Rapto violento.

11. Subtracção de criança.

12. Arrombamento de caza com o fim de roubar ou para commetter outro crime.

13. Crimes resultantes do incendio voluntario de uma caza, ou de edificios connexos com ella, em prejuizo de outrem.

14. Roubo.

15. Pirataria segundo o direito das gentes.

16. Destruicção de navio no alto mar, ou facto de mettel-o a pique, ou tentativa de taes actos.

17. Crimes resultantes de assolto a bordo de um navio no alto mar, com intençào de causar a morte, ou graves offensas physicas.

† This should read, "Crimes in bankruptcy which are subject to criminal proceedings . . .": *i.e.* Crimes against bankruptcy law.

18. Crimes arising from the revolt of two or more persons on board a ship on the high seas, against the authority of the captain.

18. Crimes resultantes da revolta por duas ou mais pessoas de bordo de um navio em alto mar contra a auctoridade do capitão.

Brazil.

19. Extradition will also take place for participation in any of the above-named crimes, provided that such participation shall be punishable by the laws of both the States of the High Contracting Powers*.

Accessories.

* [*sic*: read "Parties"].

Subjects;

III.—No British subject shall be delivered up by the Government or authorities of the United Kingdom to the Government or authorities of the Empire; and in like manner no Brazilian subject shall be delivered up by the Government or authorities of the Empire to the Government or authorities of the United Kingdom.

If, however, the person who has taken refuge in the territory of the other High Contracting Party shall have become naturalized there after the perpetration of the crime, such naturalization shall not be an obstacle to his extradition according to the stipulations of this Treaty.

subsequent naturalization.

IV.—The extradition shall not take place if the person claimed has already been tried and acquitted, or punished, or if he is under trial, for the same crime for which extradition is asked. If he should be under trial for any other crime, his extradition shall be deferred until the conclusion of the trial, and the fulfilment of the punishment, when such may have been awarded.

No extradition if person has been or is being tried:

if for another offence, surrender postponed.

V.—The extradition shall also not take place if, after the perpetration of the crime, or the institution of the penal prosecution, or the conviction thereof, the refugee shall have acquired exemption from prosecution, or punishment, by lapse of time, according to the laws of the State appealed to.

No extradition if offence prescribed.

VI.—The person claimed shall not be delivered up for crimes of a political character, and when he shall have been delivered up on other grounds he shall not be punished for anterior political crimes. He shall not, moreover, be delivered up if he can clearly prove that the requisition is made with the object of trying him, or of punishing him, for a political crime.

Political offences.

VII.—A person surrendered cannot be kept in prison, or brought to trial, in the State to which the surrender is made, for any other crime, or on account of any other matters, than those for which the extradition has been granted. This statement is not applicable to crimes committed after the extradition.

Trial after surrender to be limited to extradition offence.

<p>Brazil.</p> <hr/> <p>Claims by several States.</p>	<p>VIII.—If the person whose extradition is demanded by one of the High Contracting Parties shall be also claimed by one or more other Governments, on account of crimes committed in their respective territories, the following rule shall be observed:</p> <p>If he shall be a subject of the High Contracting Party who claims him, the surrender shall be made to it. If he be not so, the other High Contracting Party shall have the power of delivering him up to the reclaiming Government which in the case in question may appear to the former best entitled to the preference.</p>
<p>Requisitions.</p>	<p>IX.—A requisition for extradition shall be made through the respective Diplomatic Agents of the High Contracting Powers.</p>
<p>Arrest to be justified by law of extraditing State.</p>	<p>When it relates to a person accused only, it must be accompanied by the warrant of arrest, issued by the competent authority of the State applying for it, and by such evidence as according to the laws of the place where the accused is found, would justify the arrest if the crime was there committed.</p>
<p>Evidence of conviction.</p>	<p>If the extradition refers to a person already convicted, the application must be accompanied by a copy of the sentence of condemnation, passed against him, given by a competent tribunal of the State making the requisition.</p> <p>The requisition cannot, however, be founded on a sentence passed <i>in contumaciam</i>, that is to say, when the delinquent has not been personally cited to defend himself.</p>
<p>Procedure.</p>	<p>X.—If the requisition has been in conformity with the foregoing stipulations, the competent authorities of the State to which it has been addressed shall proceed to the capture of the refugee. The prisoner shall be brought before a competent authority, who is to examine him and conduct the preliminary investigations of the case just as if the apprehension had taken place for crime committed in the same country.</p>
<p>Evidence to justify committal for trial in extraditing State.</p>	<p>XI.—The extradition shall in no case take place before the expiration of 15 days counted from the apprehension, and after that delay it shall only be carried out when the evidence has been found sufficient according to the laws of the country applied to, either for subjecting the prisoner to trial if the crime had been there committed, or to prove the identity of the person convicted and condemned by the tribunals of the State making the requisition.</p>
<p>Evidence taken in claiming State to be admitted.</p>	<p>XII.—In the examinations which are to be made in conformity with the foregoing stipulations, the authorities of the State to which application is made, shall admit as valid evidence the</p>

sworn depositions or declarations of witnesses, which were taken in the other State, or the respective copies thereof as well as the judicial documents, warrants, or sentences, transmitted therefrom, provided they are signed or certified by the hand of the Judge, Magistrate, or public officer of that State, and authenticated, either by the oath of some witness, or by the official seal of the Minister of Justice or some other Minister of State.

Brazil.Authentication
of documents.

XIII.—If within 2 months counting from the date of arrest, sufficient evidence for the extradition shall not have been presented, the person arrested shall be set at liberty. He shall likewise be set at liberty if, within 2 months of the day on which he was placed at the disposal of the Diplomatic Agent, he shall not have been sent off to the reclining country.

Delays for
presenting
evidence;
and for despatch
of fugitive.

XIV.—All the articles found in the possession of the person demanded, at the time of his apprehension, shall be seized in order to their delivery with him, when his extradition shall take place.

Articles seized.

This delivery shall not be limited to effects or articles robbed, stolen, or obtained by other crimes, but shall extend to all that might serve as evidence of the crime; it shall be made even when the extradition could not be made after orders to that effect, on account of the flight or death of the person claimed.

XV.—The High Contracting Parties renounce whatever claims they may have for the reimbursement of the expenses incurred for the apprehension and maintenance of the persons to be delivered up, and for their conveyance until they shall be placed on board ship, as they agree to defray these outgoings in their respective countries.

Expenses.

XVI.—The stipulations of the present Treaty shall apply to the Colonies and other possessions of Her Britannic Majesty.

Extradition by
British Colonies.

The requisition for the surrender shall be made to the Governor, or to the chief authority, in the Colony or possession, by the highest Consular Agent of Brazil.

The surrender shall be made by the Governor or the chief authority, who shall, however, have the power either to make it, or to refer the matter to his Government.

Both in the requisitions and in the surrender, the conditions established by the foregoing Articles of this Treaty shall be, as far as may be possible, adhered to.

As Her Britannic Majesty has the power to adopt special arrangements in the Colonies and possessions, respecting the delivering up of delinquents, Her Majesty will facilitate the

Brazil. reclamations of Brazil in this respect, as far as may be possible, with due regard, however, to the provisions of this Treaty.

XVII.—The present Treaty shall come into force 10 days after its publication, and in conformity with the forms prescribed by the laws of the countries of the High Contracting Parties. It will remain in force until one of these shall give notice for its termination, but it shall then remain in force for 6 months, counted from the day of this notification.

This Treaty shall be ratified, and the ratifications exchanged in Rio de Janeiro, within 3 months, or sooner if possible.

Protocol.

Attempts at
infanticide.

The Plenipotentiaries “directed their attention to the fact that the criminal law of England punishes the crime of infanticide with the same penalty as that of murder, when accompanied by corresponding circumstances, and that it results therefrom that extradition should take place even for attempting to commit that crime.

“On the other hand, they observed, that according to the Brazilian law, infanticide is not punished as murder, nor even as manslaughter, but as a crime distinct from both, and by a minor punishment, and that consequently extradition should not take place for the attempt.

“They consequently resolved to declare that extradition shall solely take place for the crime of infanticide, and not for an attempt to commit that crime.”

CHILE.

[Treaty, 26th January, 1897. O. in C. 9th August, 1898.
Acts in force from 22nd August, 1898.]

Agreement to
extradite.

I.—The High Contracting Parties engage to deliver up to each other, under certain circumstances and conditions stated in the present Treaty, those persons who, being accused or convicted of any of the crimes or offences enumerated in Article II, committed in the territory of the one Party, shall be found within the territory of the other Party.

II.—Extradition shall be reciprocally granted for the following crimes or offences:—

1. Murder (including assassination, parricide, infanticide, poisoning), or attempt or conspiracy to murder.

2. Manslaughter.

3. Administering drugs or using instruments with intent to procure the miscarriage of women.

4. Rape.

5. Carnal knowledge or any attempt to have carnal knowledge of a girl under 14 years of age, if the evidence produced justifies committal for those crimes according to the laws of both the Contracting Parties.

6. Indecent assault.

7. Kidnapping and false imprisonment, child-stealing.

8. Abduction.

9. Bigamy.

10. Maliciously wounding or inflicting grievous bodily harm.

11. Assault occasioning actual bodily harm.

12. Threats, by letter or otherwise, with intent to extort money or other things of value.

13. Perjury, or subornation of perjury.

14. Arson.

15. Burglary or house-breaking, robbery with violence, larceny, or embezzlement.

1. Asesinato (incluso el asesinato con violencia, parricidio, infanticidio, o envenenamiento), o la tentativa o conspiracion para asesinar.

2. Homicidio.

3. La administracion de drogas o el empleo de instrumentos con el propósito de procurar el aborto.

4. Estupro.

5. Conocimiento carnal o las tentativas de tenerlo con una niña menor de catorce años, siempre que el testimonio aducido justifique el enjuiciamiento por esos crímenes, segun las leyes de las dos Altas Partes Contratantes.

6. Atentado contra el pudor.

7. Robo i secuestro de un ser humano, sustraccion de niño.

8. Rapto.

9. Bigamia.

10. Lesiones o daño corporal grave hecho intencionalmente.

11. Ataque a las personas del que resulte grave daño corporal.

12. Amenazas, ya sea por medio de cartas, o de otra manera, con la intencion de sacar dinero u otros objetos de valor.

13. Perjurio, o tentativas de conseguirlo.

14. Incendio voluntario.

15. Robo, u otros crímenes, o sus tentativas, cometidos con fractura, robo con violencia, hurto i malversacion de valores públicos o particulares.

Chile.

Extradition
offences.

Chile.

16. Fraud by a bailee, banker, agent, factor, trustee, director, member, or public officer of any company, punishable with imprisonment for not less than one year by any law for the time being in force.

17. Obtaining money, valuable security, or goods by false pretences; receiving any money, valuable security, or other property, knowing the same to have been stolen or unlawfully obtained.

18.—(a) Counterfeiting or altering money or bringing into circulation counterfeited or altered money.

(b) Knowingly making without lawful authority any instrument, tool, or engine adapted and intended for the counterfeiting of the coin of the realm.

(c) Forgery, or uttering what is forged.

19. Crimes against bankruptcy law.

20. Any malicious act done with intent to endanger the safety of any persons travelling or being upon a railway.

21. Malicious injury to property, if such offence be indictable.

16. Fraude cometidos por un depositario, banquero, agente, comisionado, fidei-comisario, director, miembro o empleado público de cualquiera Compañía, siempre que sea considerado como crimen con pena no menor de un año de prision por una lei que esté en vijencia.

17. El obtener dinero, garantías de valor, o mercaderías, con pretestos falsos; el recibir dinero, garantías de valor u otros bienes, sabiendo que han sido robados o habidos indebidamente.

18.—(a) Falsificacion o alteracion de moneda, circulacion de moneda falsificada o alterada.

(b) Fabricacion a sabiendas i sin autorizacion legal de cualquier instrumento, herramienta, o aparato adaptado i destinado a la falsificacion de moneda nacional.

(c) Falsificacion o alteracion de firmas o valores, o circulacion de lo falsificado o alterado.

19. Crímenes contra las leyes de bancarrota.

20. Cualquier acto hecho con intencion criminal, i que tenga por objeto poner en peligro la seguridad de una persona que se encuentre viajando en un ferrocarril o que se halle en él.

21. Daño a la propiedad hecho con intencion criminal siempre que la ofensa sea procesable.

22. Piracy and other crimes or offences committed at sea against persons or things which, according to the laws of the High Contracting Parties, are extradition offences, and are punishable by more than one year's imprisonment.

23. Dealing in slaves in such manner as to constitute a criminal offence against the laws of both States.

22. Pirateria, i otros crímenes ó delitos cometidos en el mar sobre las personas o sobre las cosas, i que, segun las leyes respectivas de las dos Altas Partes Contratantes, sean delitos de estradicion i tengan mas de un año de pena.

23. Trata de esclavos, de manera tal que constituya una ofensa criminal contra las leyes de ambos Estados.

Chile.

The extradition is also to be granted for participation in any of the aforesaid crimes, provided such participation be punishable by the laws of both Contracting Parties. Accessories.

Extradition may also be granted at the discretion of the State applied to in respect of any other crime for which, according to the law of both the Contracting Parties for the time being in force, the grant can be made. Other offences.

III.—Each Party reserves the right to refuse or grant the surrender of its own subjects or citizens to the other Party. Subjects.

IV.—The extradition shall not take place if the person claimed on the part of Her Majesty's Government, or the person claimed on the part of the Government of Chile, has already been tried and discharged or punished, or is still under trial in the territory of the Republic of Chile or in the United Kingdom respectively for the crime for which his extradition is demanded. No extradition if person has been or is being tried.

If the person claimed on the part of Her Majesty's Government, or on the part of the Government of Chile, should be under examination for any other crime in the territory of the Republic of Chile or in the United Kingdom respectively, his extradition shall be deferred until the conclusion of the trial, and the full execution of any punishment awarded to him. Trial for another offence pending, surrender postponed.

V.—The extradition shall not take place if, subsequently to the commission of the crime, or the institution of the penal prosecution or the conviction thereon, exemption from prosecution or punishment has been acquired by lapse of time, according to the laws of the State applying or applied to. No extradition if offence prescribed.

It shall likewise not take place when, according to the law of either country, the maximum punishment for the offence is imprisonment for less than one year. Degree of extraditable offence.

- Chile.** VI.—A fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded is one of a political character, or if he proves that the requisition for his surrender has, in fact, been made with a view to try or punish him for an offence of a political character.
- Political offences.**
- VII.—A person surrendered can in no case be kept in prison or be brought to trial in the State to which the surrender has been made, for any other crime, or on account of any other matters, than those for which the extradition shall have taken place, until he has been restored, or has had an opportunity of returning to the State by which he has been surrendered.
- Trial after surrender to be limited to extradition offence.**
- This stipulation does not apply to crimes committed after the extradition.
- Requisition.** VIII.—The requisition for extradition shall be made through the Diplomatic Agents of the High Contracting Parties respectively.
- Arrest to be justified by law of extraditing State;**
- The requisition for the extradition of an accused person must be accompanied by a warrant of arrest issued by the competent authority of the State requiring the extradition, and by such evidence as, according to the laws of the place where the accused is found, would justify his arrest if the crime had been committed there.
- evidence of conviction.**
- If the requisition relates to a person already convicted, it must be accompanied by the sentence of condemnation passed against the convicted person by the competent Court of the State that makes the requisition for extradition.
- A sentence passed *in contumaciam* is not to be deemed a conviction, but a person so sentenced may be dealt with as an accused person.
- IX.—If the requisition for extradition be in accordance with the foregoing stipulations, the competent authorities of the State applied to shall proceed to the arrest of the fugitive.
- Procedure.** X.—A criminal fugitive may be apprehended under a warrant issued by any Police Magistrate, Justice of Peace, or other competent authority in either country, on such information or complaint, and such evidence, or after such proceedings, as would, in the opinion of the authority issuing the warrant, justify the issue of a warrant if the crime had been committed or the person convicted in that part of the dominions of the two Contracting Parties in which the Magistrate, Justice of Peace, or other competent authority, exercises jurisdiction; provided, however, that in the United Kingdom the accused shall, in such

case, be sent as speedily as possible before a Police Magistrate in London. He shall, in accordance with this Article, be discharged, as well in the Republic of Chile as in the United Kingdom, if within the term of 90 days a requisition for extradition shall not have been made by the Diplomatic Agent of his country in accordance with the stipulations of this Treaty. The same rule shall apply to the cases of persons accused or convicted of any of the crimes or offences specified in this Treaty, and committed in the high seas on board any vessel of either country which may come into a port of the other.

Chile.

Delay for
presenting
requisition.High sea
offences.

XI.—The extradition shall take place only if the evidence be found sufficient, according to the laws of the State applied to, either to justify the committal of the prisoner for trial, in case the crime had been committed in the territory of the same State, or to prove that the prisoner is the identical person convicted by the Courts of the State which makes the requisition, and that the crime of which he has been convicted is one in respect of which extradition could, at the time of such conviction, have been granted by the State applied to; and no criminal shall be surrendered until after the expiration of 15 days from the date of his committal to prison to await the warrant for his surrender.

Evidence to
justify committal
for trial in
extraditing State.

XII.—In the examinations which they have to make in accordance with the foregoing stipulations, the authorities of the State applied to shall admit as valid evidence the sworn depositions or the affirmations of witnesses taken in the other State, or copies thereof, and likewise the warrants and sentences issued therein, and certificates of, or judicial documents stating the fact of a conviction, provided the same are authenticated as follows:—

Evidence taken
in claiming
State to be
admitted.

i. A warrant must purport to be signed by a Judge, Magistrate, or officer of the other State.

Authentication of
documents.

ii. Depositions or affirmations, or the copies thereof, must purport to be certified, under the hand of a Judge, Magistrate, or officer of the other State, to be the original depositions or affirmations, or to be true copies thereof, as the case may require.

iii. A certificate of, or judicial document stating, the fact of a conviction must purport to be certified by a Judge, Magistrate, or officer of the other State.

iv. In every case such warrant, deposition, affirmation, copy, certificate, or judicial document must be authenticated, either by the oath of some witness, or by being sealed with the official

- Chile.** seal of the Minister of Justice, or some other Minister of the other State; but any other mode of authentication for the time being permitted by the law of the country where the examination is taken may be substituted for the foregoing.
- Claims by several States.** XIII.—If the individual claimed by one of the High Contracting Parties in pursuance of the present Treaty should be also claimed by one or several other Powers on account of other crimes or offences committed upon their respective territories, his extradition shall be granted to the State whose demand is earliest in date.
- Delay for presenting evidence.** XIV.—If sufficient evidence for the extradition be not produced within 2 months from the date of the apprehension of the fugitive, or within such further time as the State applied to, or the proper tribunal thereof, shall direct, the fugitive shall be set at liberty.
- Articles seized.** XV.—All articles seized which were in the possession of the person to be surrendered at the time of his apprehension shall, if the competent authority of the State applied to for the extradition has ordered the delivery of such articles, be given up when the extradition takes place; and the said delivery shall extend not merely to the stolen articles, but to everything that may serve as a proof of the crime.
- Expenses.** XVI.—All expenses connected with extradition shall be borne by the demanding State.
- XVII.—The stipulations of the present Treaty shall be applicable to the Colonies and foreign possessions of Her Britannic Majesty, so far as the laws in such Colonies and foreign possessions respectively will allow.
- Extradition by British Colonies.** The requisition for the surrender of a fugitive criminal, who has taken refuge in any of such Colonies or foreign possessions, shall be made to the Governor or chief authority of such Colony or possession by the chief Consular officer of the Republic of Chile in such Colony or possession.
- Such requisitions may be disposed of, subject always, as nearly as may be, and so far as the law of such Colony or foreign possession will allow, to the provisions of this Treaty, by the said Governor or chief authority, who, however, shall be at liberty either to grant the surrender or to refer the matter to his Government.
- Her Britannic Majesty shall, however, be at liberty to make special arrangements in the British Colonies and foreign possessions for the surrender of Chilean criminals who may take refuge within such Colonies and foreign possessions, on the basis, so

far as the law of such Colony or foreign possession will allow, of the provisions of the present Treaty.

Chile.

Requisitions for the surrender of a fugitive criminal emanating from any Colony or foreign possession of Her Britannic Majesty shall be governed by [the] rules laid down in the preceding Articles of the present Treaty.

Extradition to British Colonies.

XVIII.—The present Treaty shall come into force 10 days after its publication in conformity with the forms prescribed by the laws of the High Contracting Parties. It may be terminated by either of the High Contracting Parties by a notice not exceeding one year, and not less than 6 months.

It shall be ratified, after receiving the approval of the Congress of the Republic of Chile; and the ratifications shall be exchanged at Santiago as soon as possible.

COLOMBIA.

[Treaty, 28th October, 1888. O. in C. 28th November, 1889. Acts in force from 9th December, 1889.]

I.—The High Contracting Parties engage to deliver up to each other, under the circumstances and conditions stated in the present Treaty, those persons who, being accused or convicted of any of the crimes or offences enumerated in Article II., committed in the territory of the one Party, shall be found within the territory of the other Party.

Agreement to extradite.

II.—Extradition shall be reciprocally granted for the following crimes or offences:—

Extradition offences.

1. Murder (including assassination, parricide, infanticide, poisoning), or attempt or conspiracy to murder.

1. Homicidio (incluyendo asesinato, parricidio, infanticidio, envenenamiento), ó tentativa ó conspiración para cometerlo.

2. Manslaughter.

2. Homicidio atenuado.

3. Administering drugs or using instruments with intent to procure the miscarriage of women.

3. Administración de drogas ó uso de instrumentos con propósito de causar el aborto.

4. Rape.

4. Violación ó forzamiento de mujer.

5. Unlawful carnal knowledge, or any attempt to have

5. Ayuntamiento carnal ilegítimo ó tentativa para tenerlo

Colombia.

unlawful carnal knowledge, of a girl under 16 years of age, if the evidence produced justifies committal for those crimes according to the laws of both the Contracting Parties.

6. Indecent assault.

7. Kidnapping and false imprisonment, child-stealing.

8. Abduction.

9. Bigamy.

10. Maliciously wounding or inflicting grievous bodily harm.

11. Assault occasioning actual bodily harm.

12. Threats, by letter or otherwise, with intent to extort money or other things of value.

13. Perjury or subornation of perjury.

14. Arson,

15. Burglary or housebreaking, robbery with violence, larceny, or embezzlement.

16. Fraud by a bailee, banker, agent, factor, trustee, director, member, or public officer of any company, made criminal by any law for the time being in force.

17. Obtaining money, valuable security, or goods by false pretences; receiving any money, valuable security, or other property, knowing the same to have been stolen or unlawfully obtained.

con una niña de menos de 16 años de edad, si las pruebas que se produzcan justifican el enjuiciamiento por tales delitos conforme á las leyes de ambas Partes Contratantes.

6. Ultraje al pudor.

7. Secuestro de personas, retención ilegal ó robo de niños.

8. Rapto.

9. Bigamia.

10. Heridas ó lesiones corporales graves hechas con intención.

11. Asalto que ocasione daño corporal efectivo.

12. Amenazas, sea por cartas ó de cualquier otro modo, con propósito de estafar dinero ú otras cosas de valor.

13. Prjurio ó soborno de testigos.

14. Incendio voluntario.

15. Escalamiento ó forzamiento de habitación con intento criminal, robo ejecutado con violencia, ó hurto.

16. Abuso de confianza ó defraudación por un depositario, banquero, agente, factor, administrador, director, miembro ó empleado público de una Compañía, que se haga criminal conforme á las leyes vigentes.

17. Estafa de dinero ó papel moneda, de prendas, valiosas ó de mercancías con falsos pretextos; recibo de dinero ó papel moneda, de prendas valiosas ó de otras propiedades con conocimiento de que han sido robadas ó ilegalmente obtenidas.

18.—(a) Counterfeiting or altering money or bringing into circulation counterfeited or altered money.

(b) Forgery, or counterfeiting or altering, or uttering what is forged, counterfeited or altered.

(c) Knowingly making, without lawful authority, any instrument, tool, or engine adapted and intended for the counterfeiting of coin, or forgery of any paper money of the respective countries.

19. Crimes against bankruptcy law.

20. Any malicious act done with intent to endanger the safety of any person travelling or being upon a railway.

21. Malicious injury to property, if such offence be indictable.

22. Crimes committed at sea:—

(a) Piracy by the law of nations.

(b) Sinking or destroying a vessel at sea, or attempting or conspiring to do so.

(c) Revolt, or conspiracy to revolt, by two or more persons on board a ship on the high seas against the authority of the master.

(d) Assault on board a ship on the high seas with intent to

18.—(a) Falsificación ó alteración de moneda ó papel moneda, ó circulación de moneda ó papel moneda falsos ó alterados.

(b) Falsificación, imitación, alteración ó emisión de lo que ha sido falsificado, imitado ó alterado.

(c) Construcción, á sabiendas, sin autorización legal de instrumento, utensilio ó aparato adaptado y destinado á la fabricación de moneda falsa, ó á la falsificación de papel moneda de los países.

19. Delitos contra las leyes sobre bancarrota.

20. Toda acción maliciosa ejecutada con propósito de poner en peligro la seguridad de cualquiera persona que viaje en ferrocarril ó se halle sobre la línea férrea.

21. Daño malicioso á la propiedad, si el acto está erigido en delito.

22. Delitos que se cometan en el mar, á saber:—

(a) Piratería, calificada conforme al derecho de gentes.

(b) Hundimiento ó destrucción de un buque en el mar, ó tentativa y conspiración para ejecutar estos hechos.

(c) Sublevación ó conspiración para sublevarse, formada por dos ó más personas á bordo de un buque en alta mar contra la autoridad del capitán.

(d) Asalto á bordo de un buque en alta mar con propósito

<u>Colombia.</u>	destroy life or to do grievous bodily harm.	de quitar la vida ó hacer grave daño corporal.
	23. Dealing in slaves in such manner as to constitute a criminal offence against the laws of both States.	23. Trata de esclavos ejecutada con las circunstancias que la constituyen delito conforme á las leyes de ambos Estados.
Accessories.	The extradition is also to be granted for participation in any of the aforesaid crimes, provided such participation be punishable by the laws of both Contracting Parties.	
Other offences.	Extradition may also be granted at the discretion of the State applied to in respect of any other crime for which, according to the laws of both the Contracting Parties for the time being in force, the grant can be made.	
Subjects.	III.—Either Government may, in its absolute discretion, refuse to deliver up its own subjects to the other Government.	
No extradition if person has been or is being tried.	IV.—The extradition shall not take place if the person claimed on the part of Her Majesty's Government, or the person claimed on the part of the Government of Colombia, has already been tried and discharged, or punished, or is still under trial in the territory of Colombia or in the United Kingdom respectively, for the crime for which his extradition is demanded.	
Trial for another offence pending, surrender postponed.	If the person claimed on the part of Her Majesty's Government, or on the part of the Government of Colombia, should be under examination for any other crime in the territory of Colombia or in the United Kingdom respectively, his extradition shall be deferred until the conclusion of the trial and the full execution of any punishment awarded to him.	
No extradition if offence prescribed.	V.—The extradition shall not take place, if subsequently to the commission of the crime, or the institution of the penal prosecution or the conviction thereon, exemption from prosecution or punishment has been acquired by lapse of time, according to the laws of the State applied to.	
Political offences.	VI.—A fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded is one of a political character, or if he prove that the requisition for his surrender has, in fact, been made with a view to try or punish him for an offence of a political character.	
Trial after surrender to be limited to extradition offence.	VII.—A person surrendered can in no case be kept in prison, or be brought to trial, in the State to which the surrender has been made, for any other crime, or on account of any other matters, than those for which the extradition shall have taken place, until he has been restored, or has had an opportunity of	

returning, to the State by which he has been surrendered.

Colombia.

This stipulation does not apply to crimes committed after the extradition.

VIII.—The requisition for extradition shall be made through the Diplomatic Agents of the High Contracting Parties respectively.

Requisitions.

The requisition for the extradition of an accused person must be accompanied by a warrant of arrest issued by the competent authority of the State requiring the extradition, and by such evidence as, according to the laws of the place where the accused is found, would justify his arrest if the crime had been committed there.

Arrest to be justified by law of extraditing State;

If the requisition relates to a person already convicted, it must be accompanied by the sentence of condemnation passed against the convicted person by the competent Court of the State that makes the requisition for extradition.

or by evidence of conviction.

A sentence passed *in contumaciam* is not to be deemed a conviction, but a person so sentenced may be dealt with as an accused person.

IX.—If the requisition for extradition be in accordance with the foregoing stipulations, the competent authorities of the State applied to shall proceed to the arrest of the fugitive.

X.—A fugitive criminal may be apprehended under a warrant issued by any Police Magistrate, Justice of the Peace, or other competent authority in either country, on such information or complaint, and such evidence or after such proceedings as would, in the opinion of the authority issuing the warrant, justify the issue of a warrant if the crime had been committed, or the person convicted, in that part of the dominions of the two Contracting Parties in which the Magistrate, Justice of the Peace, or other competent authority exercises jurisdiction; provided, however, that in the United Kingdom the accused shall, in such case, be sent as speedily as possible before a Police Magistrate in London. He shall, in accordance with this Article, be discharged, as well in Colombia as in the United Kingdom, if within the term of 30 days a requisition for extradition shall not have been made by the Diplomatic Agent of his country, in accordance with the stipulations of this Treaty.

Procedure by warrant.

Delay for presenting requisition.

The same rule shall apply to the cases of persons accused or convicted of any of the crimes or offences specified in this Treaty, and committed on the high seas on board any vessel of either country which may come into a port of the other.

High sea offences.

Colombia.

Evidence to justify committal for trial in extraditing State.

XI.—The extradition shall take place only if the evidence be found sufficient, according to the laws of the State applied to, either to justify the committal of the prisoner for trial, in case the crime had been committed in the territory of the same State, or to prove that the prisoner is the identical person convicted by the Courts of the State which makes the requisition, and that the crime of which he has been convicted is one in respect of which extradition could, at the time of such conviction, have been granted by the State applied to; and no criminal shall be surrendered until after the expiration of 15 days from the date of his committal to prison to await the warrant for his surrender.

Evidence taken in claiming State to be admitted.

XII.—In the examinations which they have to make in accordance with the foregoing stipulations, the authorities of the State applied to shall admit as valid evidence the sworn depositions or statements of witnesses taken in the other State, or copies thereof, and likewise the warrants and sentences issued therein, and certificates of, or judicial documents stating, the fact of a conviction, provided the same are authenticated as follows:—

Authentication of documents.

1. A warrant must purport to be signed by a Judge, Magistrate, or officer of the other State.

2. Depositions or affirmations, or the copies thereof, must purport to be certified, under the hand of a Judge, Magistrate, or officer of the other State, to be the original depositions or affirmations, or to be true copies thereof, as the case may require.

3. A certificate of, or judicial document stating the fact of a conviction must purport to be certified by a Judge, Magistrate, or officer of the other State.

4. In every case, such warrant, deposition, affirmation, copy, certificate, or judicial document must be authenticated either by the oath of some witness, or by being sealed with the official seal of the Minister of Justice, or some other Minister of the other State; but any other mode of authentication for the time being permitted by law where the examination is taken may be substituted for the foregoing.

Claims by several States.

XIII.—If the individual claimed by one of the two High Contracting Parties in pursuance of the present Treaty should be also claimed by one or several other Powers, on account of other crimes or offences committed upon their respective territories his extradition shall be granted to that State whose demand is earliest in date.

XIV.—If sufficient evidence for the extradition be not Colombia. produced within 2 months from the date of the apprehension of the fugitive, or within such further time as the State applied to, or the proper tribunal thereof, shall direct, the fugitive shall be set at liberty. Delay for presenting evidence.

XV.—All articles seized which were in the possession of the person to be surrendered at the time of his apprehension shall, if the competent authority of the State applied to for the extradition has ordered the delivery of such articles, be given up when the extradition takes place; and the said delivery shall extend not merely to the stolen articles, but to everything that may serve as a proof of the crime. Articles seized.

XVI.—All expenses connected with extradition shall be borne by the demanding State. Expenses.

XVII.—The stipulations of the present Treaty shall be applicable to the Colonies and foreign possessions of Her Britannic Majesty, so far as the laws for the time being in force in such Colonies and foreign possessions respectively will allow.

The requisition for the surrender of a fugitive criminal who has taken refuge in any of such Colonies or foreign possessions shall be made to the Governor or chief authority of such Colony or possession by the chief Consular Officer of the Republic of Colombia in such Colony or possession. Extradition from British Colonies.

Such requisition may be disposed of, subject always, as nearly as may be, and so far as the law of such Colony or foreign possession will allow, to the provisions of this Treaty, by the said Governor or chief authority, who, however, shall be at liberty either to grant the surrender or to refer the matter to his Government.

Her Britannic Majesty, shall, however, be at liberty to make special arrangements in the British Colonies and foreign possessions for the surrender of Colombian criminals who may take refuge within such Colonies and foreign possessions, on the basis, as nearly as may be, and so far as the law of such Colony or foreign possession will allow, of the provisions of the present Treaty.

Requisitions for the surrender of a fugitive criminal emanating from any Colony or foreign possession of Her Britannic Majesty shall be governed by the rules laid down in the preceding Articles of the present Treaty. Extradition to British Colonies.

XVIII.—The present Treaty shall come into force 10 days after its publication, in conformity with the forms prescribed

Colombia. by the laws of the High Contracting Parties. It may be terminated by either of the High Contracting Parties by a notice not exceeding one year and not less than 6 months.

The Treaty, after receiving the approval of the Congress of Colombia, shall be ratified, and the ratifications shall be exchanged at Bogotá as soon as possible.

CUBA.

[Treaty, 3rd October, 1904. O. in C. 10th May, 1905.
Acts in force from 22nd May, 1905.]

Agreement to
extradite.

I.—The High Contracting Parties engage to deliver up to each other, under certain circumstances and conditions stated in the present Treaty, those persons who, being accused or convicted of any of the crimes or offences enumerated in Article II committed in the territory of the one Party, shall be found within the territory of the other Party.

Extradition
offences.

II.—Extradition shall be reciprocally granted for the following crimes or offences:—

- | | |
|--|--|
| <p>1. Murder, or attempt or conspiracy to murder.</p> | <p>1. Asesinato, parricidio, infanticidio; ó la tentativa de cualquiera de estos delitos.</p> |
| <p>2. Manslaughter.</p> | <p>2. Homicidio.</p> |
| <p>3. Administering drugs or using instruments with intent to procure the miscarriage of women.</p> | <p>3. El empleo de drogas ó instrumentos con el propósito de hacer abortar á una mujer.</p> |
| <p>4. Rape.</p> | <p>4. Violación.</p> |
| <p>5. Carnal knowledge or any attempt to have carnal knowledge of a girl under the age of puberty according to the laws of the respective countries.</p> | <p>5. Acceso carnal ó la tentativa de acceso carnal con una menor impúber según las leyes de los respectivos países.</p> |
| <p>6. Indecent assault.</p> | <p>6. Abusos deshonestos.</p> |
| <p>7. Kidnapping and false imprisonment, child-stealing.</p> | <p>7. Detención ilegal y sustracción de menores.</p> |
| <p>8. Abduction.</p> | <p>8. Rapto.</p> |
| <p>9. Bigamy.</p> | <p>9. Bigamia.</p> |

10. Maliciously wounding or inflicting grievous bodily harm.

11. Assault occasioning actual bodily harm.

12. Threats, by letter or otherwise, with intent to extort money or other things of value.

13. Perjury or subornation of perjury.

14. Arson.

15. Burglary or house-breaking, robbery with violence, larceny, or embezzlement.

16. Fraud by a bailee, banker, agent, factor, trustee, director, member, or public officer of any company.

17. Obtaining money, valuable security, or goods by false pretences; receiving any money, valuable security, or other property, knowing the same to have been stolen or unlawfully obtained.

18.—(a) Counterfeiting or altering money or bringing into circulation counterfeited or altered money.

(b) Knowingly making without lawful authority any instrument, tool, or engine adapted and intended for the counterfeiting of the coin of the realm.

(c) Forgery, or uttering what is forged.

19. Crimes against bankruptcy law.

10. Heridas ó golpes que ocasionen graves lesiones, unas y otros dados intencionalmente.

11. Agresión violenta contra las personas que ocasione lesión corporal.

12. Amenazas en cartas ó hechas en otra forma con el fin de obtener dinero ú otros objetos de valor.

13. Perjurio ó soborno para que se cometa perjurio.

14. Incendio.

15. Allanamiento de morada, robo, hurto ó estafa.

16. Fraude cometido por un depositario, banquero, agente, factor, administrador, director, miembro ó empleado público de alguna compañía.

17. Obtener con engaño dinero, documentos de valor ó efectos muebles; ocultación ó aprovechamiento de dinero, documentos de valor ú efectos muebles robados ú obtenidos ilegalmente sabiéndolo.

18.—(a) Falsificación ó alteración de la moneda ó poner en circulación moneda falsa ó alterada.

(b) Fabricar á sabiendas sin autorización legal algún instrumento, utensilio ó máquina adaptada y destinada conocidamente á la falsificación de moneda acunada del Estado.

(c) Falsificación ó poner en circulación lo falsificado.

19. Delitos relacionados en la ley de quiebras.

Cuba.

20. Any malicious act done with intent to endanger the safety of any persons travelling or being upon a railway.

21. Malicious injury to property, if such offence be indictable.

22. Piracy and other crimes or offences committed at sea against persons or things which, according to the laws of the High Contracting Parties, are extradition offences, and are punishable by more than one year's imprisonment.

23. Dealing in slaves in such manner as to constitute a criminal offence against the laws of both States.

20. Cualquier acto criminal ejecutado con el propósito de poner en peligro la seguridad de alguna persona que viaje ó esté en un ferrocarril.

21. Daños intencionales causados á la propiedad, si el hecho fuere penable.

22. Piratería y otros crímenes ó delitos cometidos en el mar contra las personas ó cosas que, según las leyes de las Altas Partes Contratantes, estén sujetas á extradición y sean penables con más de un año de prisión.

23. Tráfico de esclavos en términos que constituyan delito contra las leyes de ambos Estados.

Accessories.

Extradition shall also be granted for participation in any of the aforesaid crimes, provided such participation be punishable by the laws of both Contracting Parties.

Other offences.

Extradition may also be granted at the discretion of the State applied to in respect of any crime for which, according to the law of both the Contracting Parties for the time being in force, the grant can be made.

Subjects.

III.—Neither Party is obliged to surrender its own subjects or citizens to the other Party.

No extradition if person has been or is awaiting tried.

IV.—Extradition shall not take place if the person claimed on the part of His Majesty's Government, or of the Government of Cuba, has already been tried and discharged or punished, or is awaiting trial in the territory of the United Kingdom or in the Republic of Cuba respectively, for the crime for which his extradition is demanded.

Trial for another offence pending, surrender postponed.

If the person claimed on the part of His Majesty's Government, or of the Government of Cuba, should be awaiting trial or undergoing sentence for any other crime in the territory of the United Kingdom or in the Republic of Cuba respectively, his extradition shall be deferred until after he has been discharged, whether by acquittal or on expiration of sentence, or otherwise.

V.—Extradition shall not be granted if exemption from prosecution or punishment has been acquired by lapse of time, according to the laws of the State applying or applied to. Cuba.

Neither shall it be granted if, according to the law of either country, the maximum punishment for the offence charged is imprisonment for less than one year. No extradition if offence prescribed.
Degree of extraditable offence.

VI.—A fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded is one of a political character, or if he proves that the requisition for his surrender has, in fact, been made with a view to try or punish him for an offence of a political character. Political offences.

VII.—A person surrendered shall in no case be kept in prison or be brought to trial in the State to which the surrender has been made, for any other crime, or on account of any other matters, than those for which the extradition shall have taken place, until he has been restored, or has had an opportunity of returning to the State by which he has been surrendered. Trial after surrender to be limited to extradition offence.

This stipulation does not apply to crimes committed after the extradition.

VIII.—The requisition for extradition shall be made through the Diplomatic Agents of the High Contracting Parties respectively. Requisitions.

The requisition for the extradition of an accused person must be accompanied by a warrant of arrest issued by the competent authority of the State requiring the extradition, and by such evidence as, according to the laws of the place where the accused is found, would justify his arrest if the crime had been committed there. Arrest to be justified by law of extraditing State;

If the requisition relates to a person already convicted, it must be accompanied by a copy of the judgment passed on the convicted person by the competent Court of the State that makes the requisition for extradition. or by evidence of conviction.

IX.—If the requisition for extradition be in accordance with the foregoing stipulations, the competent authorities of the State applied to shall proceed to the arrest of the fugitive.

X.—A criminal fugitive may be apprehended under a warrant issued by any competent authority in either country, on such information or complaint, and such evidence, or after such proceedings, as would, in the opinion of the authority issuing the warrant, justify the issue of a warrant if the crime had been committed or the person convicted in that part of the dominions of the two Contracting Parties in which the said authority Procedure.

Cuba.	exercises jurisdiction; provided, however, that in the United Kingdom the accused shall, in such case be sent as speedily as possible before a Police Magistrate. In the Republic of Cuba the Government will decide by administrative procedure on everything connected with extradition until a special procedure on the subject be established by law.
Evidence to justify committal for trial in extraditing State.	XI.—The extradition shall take place only if the evidence be found sufficient, according to the laws of the State applied to, either to justify the committal of the prisoner for trial, in case the crime had been committed in the territory of the same State, or if extradition is claimed in respect of an offence of which the fugitive has been already convicted, to prove that the prisoner is the person convicted, and that the crime of which he has been convicted is one in respect of which extradition could, at the time of such conviction, have been granted by the State applied to.
Evidence taken in claiming State to be admitted.	XII.—In the examination which they have to make in accordance with the foregoing stipulations, the authorities of the State applied to shall admit as valid evidence the sworn depositions or the affirmations of witnesses taken in the other State, or copies thereof, and likewise the warrants and sentences issued therein, and certificates of, or judicial documents stating, the fact of a conviction, provided the same are authenticated as follows:—
Authentication of documents.	<p>1. A warrant must purport to be signed by a Judge, Magistrate, or officer of the other State.</p> <p>2. Depositions or affirmations, or the copies thereof, must purport to be certified, under the hand of a Judge, Magistrate, or officer of the other State, to be the original depositions or affirmations, or to be true copies thereof, as the case may require.</p> <p>3. A certificate of, or judicial document stating, the fact of a conviction must purport to be certified by a Judge, Magistrate, or officer of the other State.</p> <p>4. In every case such warrant, deposition, affirmation, copy, certificate, or judicial document must be authenticated, either by the oath of some witness, or by being sealed with the official seal of the Minister of Justice, or some other Minister of the other State; but any other mode of authentication for the time being permitted by the law of the country where the examination is taken may be substituted for the foregoing.</p>
Claims by several States.	XIII.—If the individual claimed by one of the High Contracting Parties in pursuance of the present Treaty should be

also claimed by one or several other Powers on account of other crimes or offences committed upon their respective territories, his extradition shall be granted to the State whose demand is earliest in date. Cuba.

XIV.—If sufficient evidence for the extradition be not produced within 2 months from the date of the apprehension of the fugitive, or within such further time as the State applied to, or the proper tribunal thereof, shall direct, the fugitive shall be set at liberty. Delay for presenting evidence.

XV.—All articles seized which were in the possession of the person to be surrendered at the time of his apprehension shall, if the competent authority of the State applied to for the extradition has ordered the delivery of such articles, be given up when the extradition takes place; and the said delivery shall extend not merely to the stolen articles, but to everything that may serve as a proof of the crime. Articles seized.

XVI.—All expenses connected with extradition shall be borne by the demanding State. Expenses.

XVII.—The stipulations of the present Treaty shall be applicable to the Colonies and foreign possessions of His Britannic Majesty, so far as the laws in such Colonies and foreign possessions respectively will allow.

The requisition for the surrender of a fugitive criminal, who has taken refuge in any of such Colonies or foreign possessions, shall be made to the Governor or Chief authority of such Colony or possession by the chief Consular Officer of the Republic of Cuba in such Colony or possession. Extradition by British Colonies.

Such requisition may be disposed of, subject always, as nearly as may be, and so far as the law of such Colony or foreign possession will allow, to the provisions of this Treaty, by the said Governor or chief authority, who, however, shall be at liberty either to grant the surrender or to refer the matter to his Government.

His Britannic Majesty shall, however, be at liberty to make special arrangements in the British Colonies and foreign possessions for the surrender of Cuban criminals who may take refuge within such Colonies and foreign possessions, on the basis, so far as the law of such Colony or foreign possessions will allow, of the provisions of the present Treaty.

Requisitions for the surrender of a fugitive criminal emanating from any Colony or foreign possession of His Britannic Majesty shall be governed by [the] rules laid down in the preceding Articles of the present Treaty. Extradition to British Colonies.

Cuba.

XVIII.—The present Treaty shall come into force 10 days after its publication, in conformity with the forms prescribed by the laws of the High Contracting Parties. It may be terminated by either of the High Contracting Parties by a notice not exceeding one year, and not less than 6 months.

It shall be ratified, after receiving the approval of the Senate of the Republic of Cuba, and the ratifications shall be exchanged at Havana as soon as possible.

DENMARK.

[Treaty, 31st March, 1873. O. in C. 26th June, 1873.
Acts in force from 7th July, 1873.]

Agreement to
extradite.

I.—It is agreed that Her Britannic Majesty and His Majesty the King of Denmark shall, on requisition made in their name by their respective Diplomatic Agents, deliver up to each other reciprocally, any persons, except native born or naturalized subjects of the Party upon whom the requisition may be made, who, being accused or convicted of any of the crimes hereinafter specified, committed within the territories of the requiring Party, shall be found within the territories of the other Party:—

Extradition
offences.

- | | |
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| <p>1. Murder, or attempt or conspiracy to murder.</p> <p>2. Manslaughter.</p> <p>3. Counterfeiting or altering money, or uttering counterfeit or altered money.</p> <p>4. Forgery, or counterfeiting, or altering, or uttering what is forged or counterfeited or altered.</p> <p>5. Embezzlement or larceny.</p> <p>6. Obtaining money or goods by false pretences.</p> <p>7. Crimes by bankrupts against bankrupt laws.</p> | <p>1. Mord eller Forsög paa Mord eller Samraad om Mord.</p> <p>2. Drab.</p> <p>3. Eftergjörelse eller Forfalskning af Penge eller Udgivelse af eftergjorte eller forfalskede Penge.</p> <p>4. Dokumentfalsk eller denan Eftergjörelse eller Forfalskning eller svigagtig Brug af et falsk Dokument eller af anden eftergjort ellet forfalsket Gjenstand.</p> <p>5. Tilegnelse af betroet Gods eller Tyveri.</p> <p>6. Tilvendelse af Penge eller Gods ved falske Foregivender.</p> <p>7. Forbrydelser af Fallenter imod Fallitlovgivningen.</p> |
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8. Fraud by a bailee, banker, agent, factor, trustee, or director, or member or public officer of any company made criminal by any law for the time being in force.

9. Rape.

10. Abduction.

11. Child-stealing.

12. Burglary or house-breaking.

13. Arson.

14. Robbery with violence.

15. Threats by letter or otherwise with intent to extort.

16. Piracy by [the] law of nations.

17. Sinking or destroying a vessel at sea, or attempting or conspiring to do so.

18. Assaults on board a ship on the high seas with intent to destroy life or to do grievous bodily harm.

19. Revolt or conspiracy to revolt by two or more persons on board a ship on the high seas against the authority of the master.

Provided that the surrender shall be made only when, in the case of a person accused, the commission of the crime shall be so established as that the laws of the country where the fugitive or person so accused shall be found would justify his apprehension and commitment for trial if the crime had been there committed; and, in the case of a person alleged to have been convicted, on such evidence as according to the laws of the country where he is found, would prove that he had been convicted.

Denmark.

8. De efter den til enhver Tid gjældende Lovgivning strafbare svigagtige Handlinger, der begaaes af en Depositarius, Bankier, Agent, Faktor, Værg, Kurator eller af et Selskabs Bestyrer, Medlem eller offentlige Betjente.

9. Voldtægt.

10. Bortførelse.

11. Barnerov.

12. Indbrudstyveri.

13. Brandstiftelse.

14. Röveri.

15. Trusler, som i Breve eller paa anden Maade fremføres for at afvænge Penge eller Gods.

16. Söröveri i folkeretlig Forstand.

17. Sænkning eller Tilintetgjørelse af et Skib i Søen eller herpaa rettet Forsøg eller Komplot.

18. Voldsgjerninger ombord paa et Skib i rum Sø, udövede i den Hensigt at dræbe eller tilföie en större Legemsbeskadigelse.

19. Mytteri ombord paa et Skib i rum Sø mod Skibsförens Myndighed eller derpaa rettet Sammenrottelse af to eller flere Personer.

Arrest and committal to be justified by law of extraditing State.

Denmark.

Proceedings on
requisitions
in the United
Kingdom.
Accused persons.

II.—In the dominions of Her Britannic Majesty, other than the Colonies or foreign possessions of Her Majesty, the manner of proceeding shall be as follows:—

i. In the case of a person accused—

The requisition for the surrender shall be made to Her Britannic Majesty's Principal Secretary of State for Foreign Affairs by the Minister or other Diplomatic Agent of His Majesty the King of Denmark at London, accompanied by, (1) a warrant or other equivalent judicial document for the arrest of [the] accused, issued by a Judge or Magistrate duly authorised to take cognizance of the acts charged against him in Denmark; (2) duly authenticated depositions or statements taken on oath before such Judge or Magistrate, clearly setting forth the acts on account of which the fugitive is demanded; and (3) a description of the person claimed, and any other particulars which may serve to identify him. The said Secretary of State shall transmit such documents to Her Britannic Majesty's Principal Secretary of State for the Home Department, who shall then, by order under his hand and seal, signify to some Police Magistrate in London that such requisition has been made, and require him, if there be due cause, to issue his warrant for the apprehension of the fugitive.

Arrest to be
justified by
English law

On the receipt of such order from the Secretary of State, and on the production of such evidence as would, in the opinion of the Magistrate, justify the issue of the warrant if the crime had been committed in the United Kingdom, he shall issue his warrant accordingly.

Evidence to
justify committal
for trial in
England.

When the fugitive shall have been apprehended in virtue of such warrant, he shall be brought before the Police Magistrate in London. If the evidence to be then produced shall be such as to justify, according to the law of England, the committal for trial of the prisoner if the crime of which he is accused had been committed in England, the Police Magistrate shall commit him to prison to await the warrant of the Secretary of State for his surrender; sending immediately to the Secretary of State a certificate of the committal and a report upon the case.

After the expiration of a period from the committal of the prisoner, which shall never be less than 15 days, the Secretary of State shall, by order under his hand and seal, order the fugitive criminal to be surrendered to such person as may be duly authorized to receive him on the part of the Government of His Majesty the King of Denmark.

ii. In the case of a person convicted—

The course of proceeding shall be the same as in the proceeding case of a person accused, except that the document to be produced by the Minister or other Diplomatic Agent of His Danish Majesty in support of his requisition, shall clearly set forth the crime of which the person claimed has been convicted, and state the fact, place, and date of his conviction. The evidence to be produced before the Police Magistrate shall be such as would, according to the law of England, prove that the prisoner was convicted of the crime charged.

Denmark.

Convicted persons.

After the Police Magistrate shall have committed the accused or convicted person to prison to await the order of a Secretary of State for his surrender, such person shall have the right to apply for a writ of *habeas corpus*. If he should so apply, his surrender must be deferred until after the decision of the Court upon the return to writ, and even then can only take place if the decision is adverse to the applicant. In the latter case the Court may at once order his delivery to the person authorised to receive him, without the order of a Secretary of State for his surrender, or commit him to prison to await such order.

Habeas corpus.

III.—In the dominions of His Majesty the King of Denmark other than the Colonies or foreign possessions of His said Majesty, the manner of proceeding shall be as follows:—

Proceedings on requisitions in Denmark.

i. In the case of a person accused—

The requisition for the surrender shall be made to the Minister for Foreign Affairs of His Majesty the King of Denmark by the Minister or other Diplomatic Agent of Her Britannic Majesty at Copenhagen, accompanied by, (1) a warrant for the arrest of the accused, issued by a Judge or Magistrate duly authorised to take cognizance of the acts charged against him in Great Britain; (2) duly authenticated depositions or statements taken on oath before such Judge or Magistrate, clearly setting forth the acts on account of which the fugitive is demanded; and (3) a description of the person claimed, and any other particulars which may serve to identify him.

Accused persons.

The Minister for Foreign Affairs of His Majesty the King of Denmark shall transmit such requisition for surrender to the Minister of Justice of His Majesty the King of Denmark, who, after having ascertained that the crime therein specified is one of those enumerated in the present Treaty, and satisfied himself that the evidence produced is such as, according to Danish law, would justify the committal for trial of the individual demanded, if the crime had been committed in Denmark, shall take the

<p>Denmark.</p>	<p>necessary measures for causing the fugitive to be delivered to the person charged to receive him by the Government of Her Britannic Majesty.</p>
<p>Convicted persons.</p>	<p><i>ii.</i> In the case of a person convicted— The course of proceeding shall be the same as in the preceding case of a person accused, except that the warrant to be transmitted by the Minister or other Diplomatic Agent of Her Britannic Majesty in support of his requisition, shall clearly set forth the crime of which the person claimed has been convicted, and state the fact, place, and date of his conviction. The evidence to be produced shall be such as would, according to the laws of Denmark, prove that the prisoner was convicted of the crime charged.</p>
<p>Arrest on warrant, if justified by law of extraditing State.</p>	<p>IV.—A fugitive criminal may, however, be apprehended under a warrant issued by any Police Magistrate, Justice of the Peace, or other competent authority in either country, on such information or complaint, and such evidence, or after such proceedings as would, in the opinion of the person issuing the warrant, justify the issue of a warrant, if the crime had been committed or the prisoner convicted, in that part of the dominions of the two Contracting Parties in which he exercises jurisdiction: Provided, however, that in the United Kingdom the accused shall, in such case, be sent as speedily as possible before a Police Magistrate in London; and that in the dominions of His Majesty the King of Denmark, the case shall be immediately submitted to the Minister of Justice of His Majesty the King of Denmark; and provided, also, that the individual arrested shall in either country be discharged, if within 15 days a requisition shall not have been made for his surrender by the Diplomatic Agent of his country, in the manner directed by Articles II and III of this Treaty.</p>
<p>Delay for presenting requisition.</p>	<p>The same rule shall apply to the cases of persons accused or convicted of any of the crimes specified in this Treaty, committed on the high seas, on board a vessel of either country, which may come into a port of the other.</p>
<p>High sea offences.</p>	<p>V.—If the fugitive criminal who has been committed to prison be not surrendered and conveyed away within 2 months after such committal (or within 2 months after the decision of the Court, upon the return to a writ of <i>habeas corpus</i> in the United Kingdom), he shall be discharged from custody, unless sufficient cause be shown to the contrary.</p>
<p>Delay for removal of fugitive.</p>	<p>VI.—When any person shall have been surrendered by either of the High Contracting Parties to the other, such person shall</p>
<p>Trial after surrender to be limited to</p>	

not, until he has been restored or had an opportunity of returning to the country from whence he was surrendered, be triable or tried for any offence committed in the other country prior to the surrender, other than the particular offence on account of which he was surrendered. Denmark.
extradition
offence.

VII.—No accused or convicted person shall be surrendered, if the offence in respect of which his surrender is demanded shall be deemed by the Government upon which it is made to be one of a political character, or if in the United Kingdom he prove to the satisfaction of the Police Magistrate, or of the Court before which he is brought on *habeas corpus*, or to the Secretary of State, or in Denmark to the satisfaction of the Minister of Justice of His Majesty the King of Denmark, that the requisition for his surrender has, in fact, been made with a view to try or to punish him for an offence of a political character. Political offences.

VIII.—Warrants, depositions, or statements on oath, issued or taken in the dominions of either of the two High Contracting Parties, and copies thereof, and certificates of or judicial documents stating the fact of conviction, shall be received in evidence in proceedings in the dominions of the other, if purporting to be signed or certified by a Judge, Magistrate, or officer of the country where they were issued or taken, and provided they are authenticated by the oath of some witness, or by being sealed with the official seal of the Minister of Justice, or some other Minister of State. Evidence taken
in claiming
State to be
admitted.

Authentication
of documents.

IX.—The surrender shall not take place if, since the commission of the acts charged, the accusation, or the conviction, exemption from prosecution or punishment has been acquired by lapse of time, according to the laws of the country where the accused or convicted person shall have taken refuge. No extradition
if offence
prescribed.

X.—If the individual claimed should be under prosecution, or in custody, for a crime or offence committed in the country where he may have taken refuge, his surrender may be deferred until he shall have been set at liberty in due course of law. No extradition
if person has
been or is being
tried.

In case he should be proceeded against or detained in such country, on account of obligations contracted towards private individuals, his surrender shall nevertheless take place, the injured party retaining his right to prosecute his claims before the competent authority. Pendency of
civil proceedings.

XI.—Every article found in the possession of the individual claimed at the time of his arrest, shall be seized, in order to be delivered up with his person at the time when the surrender shall Articles seized.

- Denmark.** be made. Such delivery shall not be limited to the property or articles obtained by stealing or by fraudulent bankruptcy, but shall extend to every thing that may serve as proof of the crime. It shall take place even when the surrender, after having been ordered, shall be prevented from taking place by reason of the escape or death of the individual claimed.
- Expenses.** XII.—Each of the two Contracting Parties shall defray the expenses occasioned by the arrest within its territories, the detention, and the conveyance to its frontier, of the persons whom it may consent to surrender in pursuance of the present Treaty.
- Extradition to and from Colonies.** VIII.—The stipulations of the present Treaty shall be applicable to the Colonies or foreign possessions of the two High Contracting Parties, in the following manner:—
- The requisition for the surrender of a fugitive criminal who has taken refuge in a Colony or foreign possession of either of the two Contracting Parties, shall be made to the Governor or Chief Authority of such Colony or possession by the chief Consular Officer of the other Party in such Colony or possession; or, if the fugitive has escaped from a Colony or foreign possession of the Party on whose behalf the requisition is made, by the Governor or Chief Authority of such Colony or possession.
- Such requisitions may be disposed of, subject always, as nearly as may be, to the provisions of this Treaty, by the respective Governors or Chief Authorities, who, however, shall be at liberty either to grant the surrender, or to refer the matter to their Government.
- Her Britannic Majesty and His Majesty the King of Denmark shall, however, be at liberty to make special arrangements in their Colonies and foreign possessions for the surrender of criminals who may take refuge therein, on the basis, as nearly as may be, of the provisions of the present Treaty.
- XIV.—The present Treaty shall come into operation 10 days after its publication, in conformity with the forms prescribed by the laws of the High Contracting Parties.
- After the Treaty shall so have been brought into operation, the Convention concluded between the High Contracting Parties on the 15th of April, 1862, shall be considered as cancelled, except as to any proceeding that may have already been taken or commenced in virtue thereof.
- Either Party may at any time terminate the Treaty on giving to the other 6 months' notice of its intention.

XV.—The present Treaty shall be ratified, and the ratification shall be exchanged at Copenhagen as soon as may be within 4 weeks from the date of signature. Denmark.

ECUADOR.

[Treaty, 20th September, 1880. O. in C. 26th June, 1886.
Acts in force from 2nd July, 1886].

I.—It is agreed that Her Britannic Majesty's Government and that of Ecuador shall, on requisition made in their name by their respective Diplomatic Agents, deliver up to each other reciprocally any persons who, being accused or convicted of any of the crimes hereinafter specified, committed within the jurisdiction of the requiring Party, shall be found within the territories of the other Party:—

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| <p>1. Murder, or attempt or conspiracy to murder.</p> <p>2. Manslaughter.</p> <p>3. Counterfeiting or altering money, or uttering counterfeit or altered money.</p> <p>4. Forgery, counterfeiting, or altering, or uttering what is forged or counterfeited or altered.</p> <p>5. Embezzlement or larceny.</p> <p>6. Obtaining money or goods by false pretences.</p> <p>7. Crimes against bankruptcy law.</p> <p>8. Fraud by a bailee, banker, agent, factor, trustee, or director, or member or public officer of any company made criminal by any law for the time being in force.</p> <p>9. Rape.</p> | <p>1. Asesinato, ó tentativa ó conspiracion para asesinar.</p> <p>2. Homicidio.</p> <p>3. Falsificacion, ó alteracion de moneda, ó circulacion de moneda falsificada ó alterada.</p> <p>4. Falsificacion, contrahacimiento, ó alteracion ó circulacion de lo falsificado, contrahecho ó alterado.</p> <p>5. Hurto, ocultacion de bienes de una herencia aun no aceptada por el heredero, ó rateria.</p> <p>6. Obtener moneda ú otros efectos por medio de falsos pretextos.</p> <p>7. Crímenes contra las leyes de la bancarrota.</p> <p>8. Fraude por un individuo libre bajo fianza, banquero, agente, factor, síndico ó curador, director, miembro ó empleado público de alguna compañía, declarado criminal por ley vijente en ese tiempo.</p> <p>9. Estupro con violencia.</p> |
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Agreement to extradite.

Extradition offences.

Ecuador.	<p>10. Abduction.</p> <p>11. Child-stealing.</p> <p>12. Burglary or house-breaking.</p> <p>13. Arson.</p> <p>14. Robbery with violence.</p> <p>15. Threats by letter or otherwise with intent to extort.</p> <p>16. Piracy by [the] law of nations.</p> <p>17. Sinking or destroying a vessel at sea, or attempting or conspiring to do so.</p> <p>18. Assaults on board a ship on the high seas with intent to destroy life or to do grievous bodily harm.</p> <p>19. Revolt or conspiracy to revolt by two or more persons on board a ship on the high seas against the authority of the captain or master.</p>	<p>10. Abduccion.</p> <p>11. Robo de niños.</p> <p>12. Robo nocturno, ó entrada en una casa con violencia con el objeto de robar.</p> <p>13. Incendio intencional.</p> <p>14. Robo con violencia.</p> <p>15. Amenazas por escrito ó de cualquier otra manera con el objeto de cometer algun acto de estorsion.</p> <p>16. Pirateria segun el derecho de gentes.</p> <p>17. Hundimiento ó destruccion de una embarcacion en el mar, ó tentativa ó conspiracion con este objeto.</p> <p>18. Asaltos á bordo de un buque en alta mar, con el intento de quitar la vida ó de causar graves daños corporales.</p> <p>19. Rebelion ó tentativa de rebelion ejecutada por dos ó mas personas á bordo de un buque en alta mar, contra la autoridad del capitan ó patron.</p>	<p>Provided that the surrender shall be made only when, in the case of a person accused, the commission of the crime shall be so established as that the laws of the country where the fugitive or person so accused shall be found would justify his apprehension and commitment for trial if the crime had been there committed; and, in the case of a person alleged to have been convicted, on such evidence as, according to the laws of the country where he is found, would prove that he had been convicted.</p> <p>II.—In the dominions of Her Britannic Majesty, other than the foreign or colonial possessions of Her Majesty, the manner of proceeding shall be as follows:—</p> <p><i>i.</i> In the case of a person accused:—</p> <p>The requisition for the surrender shall be made to Her Britannic Majesty's Principal Secretary of State for Foreign Affairs by</p>
Arrest and committal to be justified by law of extraditing State.			
Proceedings on requisitions in the United Kingdom.			
Accused persons.			

some person recognised by the Secretary of State as a Diplomatic Representative of the Republic of Ecuador, accompanied by a warrant or other equivalent judicial document for the arrest of the accused, issued by a Judge or Magistrate duly authorised to take cognizance of the acts charged against him in Ecuador, together with duly authenticated depositions or statements taken on oath before such Judge or Magistrate, clearly setting forth the said acts, and a description of the person claimed, and any particulars which may serve to identify him. The said Secretary of State shall transmit such documents to Her Britannic Majesty's Principal Secretary of State for the Home Department, who shall then, by order under his hand and seal, signify to some Police Magistrate in London that such requisition has been made, and require him, if there be due cause, to issue his warrant for the apprehension of the fugitive. Ecuador.

On the receipt of such order from the Secretary of State, and on the production of such evidence as would, in the opinion of the Magistrate, justify the issue of the warrant if the crime had been committed in the United Kingdom, he shall issue his warrant accordingly. Arrest to be justified by English law.

When the fugitive shall have been apprehended in virtue of such warrant, he shall be brought before the Police Magistrate who issued it, or some other Police Magistrate in London. If the evidence to be then produced shall be such as to justify, according to the law of England, the committal for trial in the prisoner if the crime of which he is accused had been committed in England, the Police Magistrate shall commit him to prison to await the warrant of the Secretary of State for his surrender; sending immediately to the Secretary of State a certificate of the committal and a report upon the case. Evidence to justify committal for trial in England.

After the expiration of a period from the committal of the prisoner, which shall never be less than 15 days, the Secretary of State shall, by order under his hand and seal, order the fugitive criminal to be surrendered to such person as may be duly authorised to receive him on the part of the Government of Ecuador.

ii. In the case of a person convicted:—

The course of proceeding shall be the same as in the case of a person accused, except that the warrant to be transmitted by the recognised Diplomatic Representative, in support of his requisition, shall clearly set forth the crime of which the person claimed has been convicted, and state the fact, place, and date of his convicted. The evidence to be produced before the Convicted persons.

- Ecuador.** Police Magistrate shall be such as would, according to the law of England, prove that the prisoner was convicted of the crime charged.
- Habeas corpus.** After the Police Magistrate shall have committed the accused or convicted person to prison to await the order of a Secretary of State for his surrender, such person shall have the right to apply for a writ of *habeas corpus*. If he should so apply, his surrender must be deferred until after the decision of the Court upon the return to the writ, and even then can only take place if the decision is adverse to the applicant. In the latter case the Court may at once order his delivery to the person authorised to receive him, without the order of a Secretary of State for his surrender, or commit him to prison to await such order. A like proceeding shall be observed towards criminals in prison in Ecuador.
- Procedure on requisitions in Ecuador.** III.—In the Republic of Ecuador the manner of proceeding shall be as follows:—
- i.* In the case of a person accused—
- Accused persons.** The requisition for the surrender shall be made to the Minister for Foreign Affairs of Ecuador by the Minister or other Diplomatic Agent of Her Britannic Majesty, accompanied by a warrant for the arrest of the accused, issued by a Judge or Magistrate duly authorised to take cognizance of the acts charged against him in Great Britain, together with duly authenticated depositions or statements taken on oath before such Judge or Magistrate, clearly setting forth the said acts, and a description of the person claimed, and any other particulars which may serve to identify him.
- The said documents shall be transmitted to the Minister Secretary of State for the Interior Department, who shall then, by order under his hand and seal, signify to some Police Magistrate that such requisition has been made, and require him, if there be due cause, to issue his warrant for the apprehension of the fugitive.
- Evidence to justify committal for trial in Ecuador.** On the receipt of such order from the Minister Secretary of State, and on the production of such evidence as would justify the issue of the warrant, if the crime had been committed in Ecuador, he shall issue his warrant accordingly.
- When the fugitive shall have been apprehended in virtue of such warrant he shall be brought before the Police Magistrate who issued it, or some other authority of the same class. If the evidence to be then produced shall be such as to justify, accord-

ing to the law of Ecuador, the committal for trial of the prisoner if the crime of which he is accused had been committed in Ecuador, the Police Magistrate shall commit him to prison to await the warrant of the Secretary of State for his surrender, sending immediately to the Secretary of State a certificate of the committal and a report upon the case.

Ecuador.

After the expiration of a period from the committal of the prisoner, which shall never be less than 15 days, the Secretary of State shall, by order under his hand and seal, order the fugitive criminal to be surrendered to such person as may be duly authorised to receive him on the part of the Government of Her Majesty.

ii. In the case of a person convicted—

The course of proceeding shall be the same as in the case of a person accused, except that the warrant to be transmitted by the Minister or other Diplomatic Agent in support of his requisition shall clearly set forth the crime of which the person claimed has been convicted, and state the fact, place, and date of his conviction. The evidence to be produced before the Magistrate charged with the investigation of the case shall be such as would, according to the laws of Ecuador, prove that the prisoner was convicted of the crime charged.

Convicted persons.

IV.—A fugitive criminal may, however, be apprehended under a warrant issued by any Police Magistrate or other competent authority in either country on such information or complaint, and such evidence, or after such proceedings as would, in the opinion of the person issuing the warrant, justify the issue of a warrant if the crime had been committed or the prisoner convicted in that part of the dominions of the two Contracting Parties in which he exercises jurisdiction: Provided, however, that in the United Kingdom the accused shall, in such case, be sent as speedily as possible before a Police Magistrate in London, and that he shall be discharged, if within 30 days a requisition shall not have been made for his surrender by the Diplomatic Agent of his country, in the manner directed by Articles II and III of this Treaty.

Arrest on warrant if justified by law of extraditing State.

Delay for pre-enting requisition.

The same rule shall apply to the cases of persons accused or convicted of any of the crimes specified in this Treaty, committed on the high seas, on board any vessel of either country, which may come into any port of the other.

High sea offences.

V.—If the fugitive criminal who has been committed to prison be not surrendered and conveyed away within 2 months after

Delay for removal of fugitive.

Ecuador.	such committal, or within 2 months after the decision of the Court, upon the return to a writ of <i>habeas corpus</i> in the United Kingdom, he shall be discharged from custody, unless sufficient cause be shown to the contrary.
Trial after surrender to be limited to extradition offence.	VI.—When any person shall have been surrendered by either of the High Contracting Parties to the other, such person shall not, until he has been restored, or had an opportunity of returning to the country from whence he was surrendered, be triable or tried for any offence committed in the other country prior to the surrender, other than the particular offence on account of which he was surrendered
Naturalized subjects.	VII.—In any case where an individual convicted or accused in Ecuador of any of the crimes described in the present Treaty, and who shall have taken refuge in the United Kingdom, shall have obtained naturalization there, such naturalization shall not prevent the search for, arrest, and surrender of such individual to the Ecuatorian authorities, in conformity with the said Treaty. In like manner the surrender shall take place on the part of Ecuador in any case where an individual accused or convicted in England of any of the same crimes who shall have taken refuge in Ecuador shall have obtained naturalization there.
Political offences.	VIII.—No accused or convicted person shall be surrendered, if the offence in respect of which his surrender is demanded shall be deemed by the Party upon whom it is made to be one of a political character, or if he prove to the satisfaction of the Police Magistrate, or of the Court before which he is brought on <i>habeas corpus</i> , or to the Secretary of State, that the requisition for his surrender has, in fact, been made with a view to try or to punish him for an offence of a political character.
Evidence taken in claiming State to be admitted.	IX.—Warrants, depositions, or statements on oath, issued or taken in the dominions of either of the two High Contracting Parties, and copies thereof, and certificates of or judicial documents stating the fact of conviction, shall be received in evidence in proceedings in the dominions of the other if purporting to be signed or certified by a Judge, Magistrate, or officer of the country where they were issued or taken.
Authentication of documents.	Provided such warrants, depositions, statements, copies, certificates, and judicial documents are authenticated by the oath of some witness, or by being sealed with the official seal of the Minister of Justice or some other Minister of State.
	X.—The surrender shall not take place if, since the commission of the acts charged, the accusation, or the conviction, exemption

from prosecution or punishment has been acquired by lapse of time, according to the laws of the country where the accused shall have taken refuge. Ecuador.

XI.—If the individual claimed by one of the two Contracting Parties, in pursuance of the present Treaty, should be also claimed by one or several other Powers, on account of other crimes committed upon their territory, his surrender shall, in preference, be granted in compliance with that demand which is earliest in date. Claims by several States.

XII.—If the individual claimed should be under prosecution, or in custody, for a crime or offence committed in the country where he may have taken refuge, his surrender may be deferred until he shall have been set at liberty in due course of law. Trial for another offence pending, surrender postponed.

In case he should be proceeded against or detained in such country on account of obligations contracted towards private individuals, his surrender shall nevertheless take place, the injured party retaining his right to prosecute his claims before the competent authority. Pendency of civil proceedings.

XIII.—Every article found in the possession of the individual claimed at the time of his arrest shall be seized, in order to be delivered up with his person at the time when the surrender shall be made. Such delivery shall not be limited to the property or articles obtained by stealing or by fraudulent bankruptcy, but shall extend to everything that may serve as proof of the crime. It shall take place even when the surrender, after having been ordered, shall be prevented from taking place by reason of the escape or death of the individual claimed. Articles seized.

XIV.—Each of the two Contracting Parties shall defray the expenses occasioned by the arrest within its territories, the detention, and the conveyance to its frontier, of the persons whom it may consent to surrender in pursuance of the present Treaty. Expenses.

XV.—The stipulations of the present Treaty shall be applicable to the foreign or colonial possessions of the two High Contracting Parties.

The requisition for the surrender of a fugitive criminal who has taken refuge in a foreign or colonial possession of either Party, shall be made to the Governor or chief authority of such possession by the Chief Consular Officer of the other at the seat of Government; or, if the fugitive has escaped from a foreign or colonial possession of the Party on whose behalf the requisition is made, by the Governor or chief authority of such possession. Extradition to and from Colonies.

Ecuador. Such requisitions may be disposed of, subject always, as nearly as may be, to the provisions of this Treaty, by the respective Governors or chief authorities, who, however, shall be at liberty either to grant the surrender, or to refer the matter to their Government.

British Colonies. Her Britannic Majesty shall, however, be at liberty to make special arrangements in the British Colonies and foreign possessions for the surrender of Ecuatorian criminals who may take refuge within such Colony, on the basis, as nearly as may be, of the provisions of the present Treaty.

XVI.—The present Treaty shall come into operation 2 months after the exchange of the ratifications. Due notice shall in each country be given of the day.

Either Party may at any time terminate the Treaty on giving to the other 6 months' notice of its intention.

XVII.—The present Treaty shall be ratified, and the ratifications shall be exchanged at the capital of Ecuador within 8 months after the approbation of the Legislative Power according to the laws of each country.

FRANCE.

[Treaty, 14th August, 1876.

O. in C. 16th May, 1878. Acts in force from 31st May, 1878.

Supplementary Convention, 13th February, 1896.

O. in C. 22nd February, 1896.]

Agreement to extradite.

I.—The High Contracting Parties engage to deliver up to each other those persons who are being proceeded against or who have been convicted of a crime committed in the territory of the one Parties, and who shall be found within the territory of the other Party under the circumstances and conditions stated in the present Treaty.

Subjects.

II.—Native-born or naturalized subjects of either country are excepted from extradition. In the case, however, of a person who, since the commission of the crime or offence of which he is accused, or for which he has been convicted, has become naturalized in the country whence the surrender is sought, such naturalization shall not prevent the pursuit, arrest and extradition of such person, in conformity with the stipulations of the present Treaty.

III.—The crimes for which the extradition is to be granted are the following:—

France.

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| <p>1. Counterfeiting or altering money, and uttering counterfeit or altered money.</p> <p>2. Forgery, counterfeiting or altering and uttering what is forged, counterfeited or altered.</p> <p>3. Murder (including assassination, parricide, infanticide and poisoning) or attempt to murder.</p> <p>4. Manslaughter.</p> <p>5. Abortion.</p> <p>6. Rape.</p> <p>7. Indecent assault, acts of indecency even without violence upon the person of girl under 12 years of age.</p> <p>8. Child-stealing, including abandoning, exposing or unlawfully detaining.</p> <p>9. Abduction.</p> | <p>1. Contrefaçon ou altération de monnaies contrefaites ou altérées.†</p> <p>2. Faux ou usage de pièces fausses; contrefaçon des sceaux de l'Etat, poinçons, timbres et marques publics, ou usage des dits sceaux, poinçons, timbres et marques publics contrefaits.§</p> <p>3. Meurtre (assassinat, parricide, infanticide, empoisonnement), ou tentative de meurtre.</p> <p>4. Coups et blessures volontaires ayant occasionné la mort, sans intention de la donner; homicide par imprudence, négligence, maladresse, inobservation des règlements.</p> <p>5. Avortement.</p> <p>6. Viol.</p> <p>7. Attentat à la pudeur avec violence; attentat à la pudeur même sans violence sur la personne d'une fille âgée de moins 12 ans.</p> <p>8. Vol, abandon, exposition ou séquestration illégale d'une enfant.</p> <p>9. Enlèvement d'un mineur au-dessous de 14 ans, ou d'une fille au-dessous de 16 ans.</p> | <p>Extradition offences.</p> |
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† The text of this clause is always printed in this way in the English books, even in the "Statutory Rules and Orders"; but there are some words omitted. The clause should run, as in the treaty with Monaco, thus—

Contrefaçon ou altération de monnaies, et mise en circulation de monnaies contrefaites ou altérées.

§ It will be noticed that in this clause "altering" is not translated, as in clause 1; and also that, like some of the other clauses, it is much fuller in the French than in the English text. The effect of variations in the two texts of a treaty is considered in Chap. V.

France.	10. Kidnapping and false imprisonment.	10. Séquestration ou détention illégale.
	11. Bigamy.	11. Bigamie.
	12. Wounding or inflicting grievous bodily harm.	12. Actes de violence ou sévices ayant causé des blessures graves.
	13. Assaulting a Magistrate, or peace or public officer.	13. Violences contre les magistrats et officiers publics dans l'exercice de leurs fonctions.
	14. Threats by letter or otherwise with intent to extort.	14. Menaces écrites ou verbales faites en vue d'extorquer de l'argent ou des valeurs.
	15. Perjury or subornation of perjury.	15. Faux témoignage, subornation de témoins d'experts ou d'interprètes.
	16. Arson.	16. Incendie volontaire.
	17. Burglary or house-breaking, robbery with violence.	17. Vols avec violence, effraction, escalade ou au moyen de fausses clefs.
	18. Fraud by a bailee, banker, agent, factor, trustee, or director, or member, or public officer of any company made criminal by any Act for the time being in force.	18. Abus de confiance ou détournement par un banquier, commissionnaire, administrateur, tuteur, curateur, liquidateur, syndic, officier ministériel, directeur, membre ou employé d'une société, ou par toute autre personne.
	19. Obtaining money, valuable security, or goods by false pretences, including receiving any chattel, money, valuable security, or other property, knowing the same to have been unlawfully obtained.	19. Escroquerie ou recel frauduleux d'argent, valeurs ou objets mobiliers provenant d'une escroquerie. Publications faites de mauvaise foi, comptes rendus écrits ou imprimés mensongers faits dans le but de tromper les actionnaires d'une société, de provoquer des souscriptions ou de déterminer des tiers à prêter de l'argent à la société.
	20. Embezzlement or larceny, including receiving any chattel, money, valuable security, or other property,	20. Détournement frauduleux, vol ou recel frauduleux de tout objet, argent ou valeur, provenant de vol ou de

knowing the same to have been embezzled or stolen.

21. Crimes against bankruptcy law.

22. Any malicious act done with intent to endanger persons in a railway train.

23. Malicious injury to property, if the offence is indictable.

24. Crimes committed at sea:—

(a) Any act of depredation or violence by the crew of a British or French vessel, against another British or French vessel, or by the crew of a foreign vessel not provided with a regular commission, against British or French vessels, their crews or their cargoes.

(b) The fact by any person being or not one of the crew of a vessel of giving her over to pirates.

(c) The fact by any person being or not one of the crew of a vessel of taking possession of such vessel by fraud or violence.

(d) Sinking or destroying a vessel at sea, or attempting or conspiring to do so.

(e) Revolt or conspiracy to revolt by two or more persons on board a ship on the high

détournement.

21. Banqueroute frauduleuse.

22. Toute acte commis avec intention de mettre en danger la vie de personnes se trouvant dans un train de chemin de fer.

23. Destruction ou dégradation de toute propriété mobilière ou immobilière, punies des peines criminelles ou correctionnelles.

24. Crimes commis en mer:—

(a) Tout acte de déprédation ou de violence commis par l'équipage d'un navire Britannique ou Français contre un autre navire Britannique ou Français, ou par l'équipage d'un navire étranger non pourvu de commission régulière, contre des navires Britanniques ou Français, leurs équipages ou leurs chargements.

(b) Le fait par tout individu, faisant ou non partie de l'équipage d'un bâtiment de mer, de le livrer aux pirates.

(c) Le fait par tout individu, faisant partie ou non de l'équipage d'un navire ou bâtiment de mer, de s'emparer du dit bâtiment par fraude ou violence.

(d) Destruction, submersion, échouement ou perte d'un navire, dans une intention coupable.

(e) Révolte par deux ou plusieurs personnes, à bord d'un navire en mer, contre l'autorité

France.

- France.** seas against the authority of du capitaine ou du patron.
the master.
25. Dealing in slaves in such 25. Traite des esclaves, telle
manner as to constitute an qu'elle est définie et punie par
offence against the laws of both les lois des deux pays.
countries.
- Accessories.** The extradition is also to take place for participation, either
as principals or accessories,† in any of the aforesaid crimes,
provided such participation be punishable by the laws of both
Contracting Parties.
- Trial after extradition to be limited to extradition offence.** IV.—The present Treaty shall apply to crimes and offences
committed prior to the signature of the Treaty; but a person
surrendered shall not be tried for any crime or offence committed
in the other country before the extradition, other than the crime
for which his surrender has been granted.
- Political offences.** V.—No accused or convicted person shall be surrendered, if
the offence in respect of which his surrender is demanded shall
be deemed by the Party upon which it is made to be a political
offence, or to be an act connected with (*connexe à*) such an
offence, or if he prove to the satisfaction of the police magistrate
or of the Court before which he is brought on *habeas corpus*, or
of the Secretary of State, that the requisition for his surrender
has, in fact, been made with a view to try or to punish him for
an offence of a political character.
- Proceedings on requisitions in France.** VI.—On the part of the French Government, the extradition
shall take place in the following manner in France:—
The Ambassador or other Diplomatic Agent of Her Britannic
Majesty in France shall send to the Minister for Foreign Affairs,
in support of each demand for extradition, an authenticated and
duly legalized copy either of a certificate of conviction, or of a
warrant of arrest against a person accused, clearly setting forth
the nature of the crime or offence on account of which the
fugitive is being proceeded against. The judicial document thus
produced shall be accompanied by a description of the person
claimed, and by any other information which may serve to
identify him.
These documents shall be communicated by the Minister for
Foreign Affairs to the Keeper of the Seals, Minister of Justice,§

† “la complicité” in the French text.

§ “Garde des Sceaux, Ministre de la Justice,” in the French text; that is to say, the Minister of State for Justice. All Minister of State in France hold the Seals of the State.

who, after examining the claim for surrender, and the documents in support thereof, shall report thereon immediately to the President of the Republic: and, if there is reason for it, a Decree of the President will grant the extradition of the person claimed, and will order him to be arrested and delivered to the British authorities.

France.

In consequence of this Decree, the Minister of the Interior shall give orders that search be made for the fugitive criminal, and in case of his arrest, that he be conducted to the French frontier, to be delivered to the person authorised by Her Britannic Majesty's Government to receive him.

Should it so happen that the documents furnished by the British Government, with the view of establishing the identity of the fugitive criminal, and that the particulars collected by the agents of the French Police with the same view, be considered insufficient, notice shall be immediately given to the Ambassador or other Diplomatic Agent of Her Britannic Majesty in France, and the fugitive person, if he has been arrested, shall remain in custody until the British Government has been able to furnish further evidence in order to establish his identity or to throw light on other difficulties in the examination.

VII.—In the dominions of Her Britannic Majesty, other than the Colonies or Foreign Possessions of Her Majesty, the manner of proceeding shall be as follows:—

Proceedings on
requisitions in
the United
Kingdom.

(A) In the case of a person accused—The requisition for the surrender shall be made to Her Britannic Majesty's Principal Secretary of State for Foreign Affairs by the Ambassador or other Diplomatic Agent of the President of the French Republic, accompanied by a warrant of arrest or other equivalent judicial document, issued by a Judge or Magistrate duly authorised to take cognizance of the acts charged against the accused in France, together with duly authenticated depositions or statements taken on oath before such Judge or Magistrate, clearly setting forth the said acts, and containing a description of the person claimed, and any particulars which may serve to identify him. The said Secretary of State shall transmit such documents to Her Britannic Majesty's Principal Secretary of State for the Home Department, who shall then, by order under his hand and seal, signify to some Police Magistrate in London that such requisition has been made, and require him, if there be due cause, to issue his warrant for the apprehension of the fugitive.

Accused persons.

France.

On the receipt of such order from the Secretary of State, and on the production of such evidence as would, in the opinion of the Magistrate, justify the issue of the warrant if the crime had been committed in the United Kingdom, he shall issue his warrant accordingly.

— amended by
Supplementary
Convention,
13th Feb., 1896.
cf. p. 105.

When the fugitive shall have been apprehended, he shall be brought before *a magistrate.* If the evidence to be then produced shall be such as to justify, according to the law of England, the committal for trial of the prisoner, if the crime of which he is accused had been committed in England, the *magistrate* shall commit him to prison to await the warrant of the Secretary of State for his surrender; sending immediately to the Secretary of State a certificate of the committal and a report upon the case.

After the expiration of a period from the committal of the prisoner which shall never be less than 15 days, the Secretary of State shall, by order under his hand and seal, order the fugitive criminal to be surrendered to such person as may be duly authorised to receive him on the part of President of the French Republic.

Convicted
persons.

(B) In the case of a person convicted—The course of proceeding shall be the same as in the case of a person accused, except that the warrant to be transmitted by the Ambassador or other Diplomatic Agent in support of his requisition shall clearly set forth the crime of which the person claimed has been convicted, and state the fact, place, and date of his conviction. The evidence to be produced before the *magistrate* shall be such as would, according to the law of England, prove that the prisoner was convicted of the crime charged.

(C) Persons convicted by judgment in default or *arrêt de contumace*, shall be in the matter of extradition considered as persons accused, and, as such, be surrendered.

Habeas corpus.

(D) After the *magistrate* shall have committed the accused or convicted person to prison to await the order of a Secretary of State for his surrender, such person shall have the right to apply for a writ of *habeas corpus*; if he should so apply, his surrender must be deferred until after the decision of the Court upon the return to the writ, and even then can only take place if the decision is adverse to the applicant. In the latter case the Court may at once order his delivery to the person authorised to receive him, without the order of a Secretary of State for his surrender, or commit him to prison to await such order.

VIII.—Warrants, depositions, or statements on oath, issued or taken in the dominions of either of the two High Contracting Parties, and copies thereof, and certificates of or judicial documents stating the facts* of conviction, shall be received in evidence in proceedings in the dominions of the other if purporting to be signed or certified by a Judge, Magistrate, or officer of the country where they were issued or taken, provided such warrants, depositions, statements, copies, certificates, and judicial documents are authenticated by the oath of some witness, or by being sealed with the official seal of the Minister of Justice or some other Minister of State.

France.

Evidence taken in claiming State to be admitted.

* [*sic*: read "fact."]]

Authentication of documents.

IX.—A fugitive criminal may be apprehended under a warrant issued by any Police Magistrate, Justice of the Peace,† or other competent authority in either country, on such information or complaint, and such evidence, or after such proceedings as would, in the opinion of the person issuing the warrant, justify the issue of a warrant, if the crime had been committed or the prisoner convicted in that part of the dominions of the two Contracting Parties in which the Magistrate exercises jurisdiction: provided, however, that in the United Kingdom, the accused shall, in such case, be sent as speedily as possible before *a Magistrate.* He shall be discharged, as well in the United Kingdom as in the France, if within 14 days a requisition shall not have been made for his surrender by the Diplomatic Agent of his country in the manner directed by Articles II. and III. of this Treaty.

Arrest on warrant, if justified by law of extraditing State.

— amended by Supplementary Convention, 13th Feb., 1896. *cf.* p. 105.

The same rule shall apply to the cases of persons accused or convicted of any of the crimes specified in this Treaty committed on the high seas on board any vessel of either country which may come into a port of the other.

High sea offences.

X.—If the fugitive criminal who has been committed to prison, be not surrendered and conveyed away within 2 months after such committal, or within 2 months after the decision of the Court upon the return to a writ of *habeas corpus* in the United Kingdom, he shall be discharged from custody, unless sufficient cause be shown to the contrary.

XI.—The claim for extradition shall not be complied with if the individual claimed has been already tried for the same offence in the country whence the extradition is demanded, or if, since the commission of the acts charged, the accusation or

No extradition if offence prescribed.

† "Magistrat de police, juge de paix," in the French text. By the former officer it is probably intended to indicate the *Tribunal de Police Correctionnelle*.

France.	the conviction, exemption from prosecution, or punishment has been acquired by lapse of time, according to the laws of that country.
Claims by several States.	XII.—If the individual claimed by one of the two High Contracting Parties in pursuance of the present Treaty should be also claimed by one or several other Powers, on account of other crimes committed upon their respective territories, his surrender shall be granted to that State whose demand is earliest in date; unless any other arrangement should be made between the Governments which have claimed him, either on account of the gravity of the crimes committed, or for any other reasons.
No extradition if person has been or is being tried.	XIII.—If the individual claimed should be under prosecution, or condemned for a crime or offence committed in the country where he may have taken refuge, his surrender may be deferred until he shall have been set at liberty in due course of law.
Pendency of civil proceedings.	In case he should be proceeded against, or detained in such country on account of obligations contracted towards private individuals, his surrender shall nevertheless take place.
Articles seized.	XIV.—Every article found in the possession of the individual claimed at the time of his arrest, shall, if the competent authority so decide, be seized, in order to be delivered up with his person at the time when the surrender shall be made. Such delivery shall not be limited to the property or articles obtained by stealing or by fraudulent bankruptcy, but shall extend to everything that may serve as proof of the crime, and shall take place even when surrender, after having been ordered, shall be prevented from taking place by reason of the escape or death of the individual claimed. The rights of third parties with regard to the said property or articles are nevertheless reserved.
Expenses.	XV.—Each of the High Contracting Parties shall defray the expenses occasioned by the arrest within its territories, the detention, and the conveyance to its frontier, of the persons whom it may have consented to surrender in pursuance of the present Treaty.
Extradition to and from Colonies.	XVI.—In the Colonies and foreign Possessions of the two High Contracting Parties the manner of proceeding shall be as follows:— The requisition for the surrender of a fugitive criminal who has taken refuge in a Colony or foreign possession of either Party, shall be made to the Governor or chief authority of such Colony or possession; or, if the fugitive has escaped from a

Colony or foreign possession of the Party on whose behalf the requisition is made, by the Governor or chief authority of such Colony or possession. France.

Such requisitions may be disposed of, subject always, as nearly as may be, to the provisions of this Treaty, by the respective Governors or chief authorities, who, however, shall be at liberty either to grant the surrender or to refer the matter to their Government.

The foregoing stipulations shall not in any way affect the arrangements established in the East Indian Possessions of the two countries by the IXth Article§ of the Treaty of the 7th March, 1815. East Indian Colonies.

XVII.—The present Treaty shall be ratified and the ratifications shall be exchanged at Paris as soon as possible.

It shall come into operation 10 days after its publication, in conformity with the laws of the respective countries.

Either Party may at any time terminate the Treaty on giving to the other 6 months' notice of its intention.

Supplementary Convention, 13th February, 1896.

I.—The text of Article VII. of the Extradition Treaty of the 14th August, 1876, is amended by the substitution of the words *of*. p. 102. 'a magistrate' for the words 'the police magistrate who issued the warrant, or some other police magistrate in London,' in the first sentence of the third paragraph of section (A), and by the omission of the word 'police' in the second sentence of the said paragraph, and in the sections (B) and (D).

II.—The text of Article IX. of the aforesaid Treaty is amended by the substitution of the words 'a magistrate' for the words 'a police magistrate in London.'

III.—The present Convention shall be ratified, and the ratifications shall be exchanged at Paris as soon as possible.

§ This Article is as follows:—

IX.—All Europeans and others whatsoever, against whom judicial proceedings shall be instituted within the limits of the said settlements or factories of His Most Christian Majesty, for offences committed, or debts contracted within the said limits, and who shall take refuge out of the same, shall be delivered up to the chiefs of the said settlements and factories; and all Europeans and others whatsoever, against whom judicial proceedings as aforesaid shall be instituted without the said limits, and who shall take refuge within the same, shall be delivered up by the chiefs of the said settlements and factories, upon demand being made of them by the British Government. † As to "factories," cf. *Exterritoriality*, 2nd. Ed. p. 174.

France.

It shall come into force 10 days after its publication in the manner prescribed by law in the respective countries, and shall have the same force and duration as the Treaty to which it relates.

GERMANY.

[Treaty, 14th May, 1872. O. in C. 25th June, 1872.

Acts in force from 8th July, 1872. Supplementary Treaty, 5th May, 1894.
O. in C. 2nd February, 1895.]

Agreement to
extradite.

I.—The High Contracting Parties engage to deliver up to each other those persons who, being accused or convicted of a crime committed in the territory of the one Party, shall be found within the territory of the other Party, under the circumstances and conditions stated in the present Treaty.

Extradition
offences.

II.—The crimes for which the extradition is to be granted are following:—

- | | |
|---|--|
| <p>1. Murder, or attempt to murder.</p> | <p>1. Mord, Mordversuch.</p> |
| <p>2. Manslaughter.</p> | <p>2. Todtschlag.</p> |
| <p>3. Counterfeiting or altering money, uttering or bringing into circulation counterfeit or altered money.</p> | <p>3. Nachmachen oder Verfälschen von Metallgeld, Verausgabung oder In-Verkehr-Bringen nachgemachten oder verfälschten Metallgeldes.</p> |
| <p>4. Forgery or counterfeiting, or altering or uttering what is forged or counterfeited or altered; comprehending the crimes designated in the German Penal Code as counterfeiting or falsification of paper-money, bank notes, or other securities, forgery or falsification of other public or private documents, likewise the uttering or bringing into circulation, or wilfully using such counterfeited, forged, or falsified papers.</p> | <p>4. Nachmachen oder Verfälschen von Papiergeld, Banknoten oder anderen Werthpapieren, Fälschung oder Verfälschung anderer öffentlicher oder Privat-Urkunden, imgleichen Verausgabung oder In Verkehr-Bringen oder wissentliches Gebrauchen solcher nachgemachten oder gefälschten Papiere.</p> |

5. Embezzlement or larceny.

6. Obtaining money or goods by false pretences.

7. Crimes by bankrupts against bankruptcy laws; comprehending the crimes designated in the German Penal Code as bankruptcy liable to prosecution.

8. Fraud by a bailee, banker, agent, factor, trustee, or director, or member or public officer of any company, made criminal by any law for the time being in force.

9. Rape.

10. Abduction.

11. Child-stealing.

12. Burglary or house-breaking.

13. Arson.

14. Robbery with violence.

15. Threats by letter, or otherwise, with intent to extort.

16. Sinking or destroying a vessel at sea, or attempting to do so.

5. Diebstahl und Unterschlagung.

6. Erlangung von Geld oder anderen Sachen durch falsche Vorspiegelungen.

7. Strafbarer Bankerrutt, unter welchen Begriff alle diejenigen strafbaren Handlungen fallen, die nach den bezüglichen Bestimmungen des deutschen Strafgesetzbuchs gerichtlich geahndet werden.

8. Untreue Seitens eines Verwalters, und Beauftragten, Banquiers, Agenten, Prokuristen, Vormundes oder Kurators, Vorstandes, Mitgliedes oder Beamten irgend einer Gesellschaft, soweit dieselbe nach den bestehenden Gesetzen mit Strafe bedroht ist.

9. Nothzucht.

10. Entführung.

11. Kinderraub.

12. Einbrechen und Eindringen in ein Wohnhaus oder dazu gehöriges Nebengebäude mit der Absicht, ein Verbrechen zu begehen, zur Tages (*house-breaking*) oder Nachtzeit (*burglary*).

13. Vorsätzliche Brandstiftung.

14. Raub mit Gewaltthätigkeiten.

15. Erpressung.

16. Vorsätzliche Versenkung oder Zerstörung eines Schiffes zur See, oder Versuch dieses Verbrechens.

Germany.

Germany.	17. Assaults on board a ship on the high seas, with intent to destroy life, or to do grievous bodily harm.	17. Angriffe auf Personen an Bord eines Schiffes auf hoher See in der Absicht zu tödten oder eine schwere Körperverletzung zu verüben.
	18. Revolt, or conspiracy to revolt, by two or more persons on board a ship on the high seas, against the authority of the master.	18. Widerstand mit Thätlichkeiten (<i>revolt</i>) gegen den Schiffsführer an Bord eines Schiffes auf hoher See, wenn dieser von zwei oder mehreren Personen verübt wird, oder Verschwörung zu einem solchen Widerstande.
Accessories.	The extradition is also to take place for participation in any of the aforesaid crimes, provided such participation be punishable by the laws of both the Contracting Parties.	
Subjects. [cf. art. III of Supplementary Convention, p. III.]	III.—No German shall be delivered up by any of the Governments of the United Kingdom; and no subject of the United Kingdom shall be delivered up by the Government thereof to any German Government.	
No extradition if person has been or is being tried.	IV.—The extradition shall not take place if the person claimed on the part of the Government of the United Kingdom, or the person claimed on the part of any of the Governments of the German Empire, has already been tried and discharged or punished, or is still under trial, in one of the States of the German Empire, or in the United Kingdom, respectively, for the crime for which his extradition is demanded.	
Where trial for another offence pending.	If the person claimed on the part of the Government of the United Kingdom, or if the person claimed on the part of any of the Governments of the German Empire, should be under examination for any other crime in one of the States of the German Empire, or in the United Kingdom, respectively, his extradition shall be deferred until the conclusion of the trial, and the full execution of any punishment awarded to him.	
No extradition if offence prescribed.	V.—The extradition shall not take place if, subsequently to the commission of the crime, or the institution of the penal prosecution, or the conviction thereon, exemption from prosecution or punishment has been acquired by lapse of time, according to the laws of the State applied to.	
Political offences.	VI.—A fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded is one of a political character, or if he prove that the requisition for his surrender has	

in fact been made with a view to try or punish him for an offence of a political character. Germany.

VII.—A person surrendered can in no case be kept in prison, or be brought to trial in the State to which the surrender has been made, for any other crime or on account of any other matters than those for which the extradition shall have taken place. Trial after extradition to be limited to extradition offence.

This stipulation does not apply to crimes committed after the extradition.

VIII.—The requisition for extradition shall be made through the Diplomatic Agents of the High Contracting Parties respectively. Requisitions.

The requisition for the extradition of an accused person must be accompanied by a warrant of arrest issued by the competent authority of the State requiring the extradition, and by such evidence as, according to the laws of the place where the accused is found, would justify his arrest if the crime had been committed there. Arrest to be justified by law of extraditing State;

If the requisition relates to a person already convicted, it must be accompanied by the sentence of condemnation passed against the convicted person by the competent Court of the State that makes the requisition for extradition. evidence of conviction.

A requisition for extradition cannot be founded on sentences passed *in contumaciam*.

IX.—If the requisition for extradition be in accordance with the foregoing stipulations, the competent authorities of the State applied to shall proceed to the arrest of the fugitive. Arrest.

The prisoner is then to be brought before a competent Magistrate, who is to examine him and to conduct the preliminary investigation of the case, just as if the apprehension had taken place for a crime committed in the same country. Procedure.

X.—The extradition shall not take place before the expiration of 15 days from the apprehension, and then only if the evidence be found sufficient, according to the laws of the State applied to, either to justify the committal of the prisoner for trial, in case the crime had been committed in the territory of the said State, or to prove that the prisoner is the identical person convicted by the Courts of the State which makes the requisition. Evidence to justify committal for trial in extraditing State.

XI.—In the examinations which they have to make in accordance with the foregoing stipulations, the authorities of the State applied to shall admit as entirely valid evidence the sworn depositions or statements of witnesses taken in the other State, Evidence taken in claiming State to be admitted.

Germany. or copies thereof, and likewise the warrants and sentences issued therein, provided such documents are signed or certified by a Judge, Magistrate, or officer of such State, and are authenticated by the oath of some witness, or by being sealed with the official seal of the Minister of Justice, or some other Minister of State.

Delay for presenting evidence. XII.—If sufficient evidence for the extradition be not produced within 2 months from the date of the apprehension of the fugitive, he shall be set at liberty.

Articles seized. XIII.—All articles seized, which were in the possession of the person to be surrendered at the time of his apprehension, shall, if the competent authority of the State applied to for the extradition has ordered the delivery thereof, be given up when the extradition takes place, and the said delivery shall extend not merely to the stolen articles, but to everything that may serve as a proof of the crime.

Expenses. XIV.—The High Contracting Parties renounce any claim for the reimbursement of the expenses incurred by them in the arrest and maintenance of the person to be surrendered, and his conveyance till placed on board ship; they reciprocally agree to bear such expenses themselves.

XV.—The stipulations of the present Treaty shall be applicable to the Colonies and foreign possessions of Her Britannic Majesty.

Extradition by British Colonies. The requisition for the surrender of a fugitive criminal who has taken refuge in any of such Colonies or foreign possessions shall be made to the Governor or chief authority of such Colony or possession by the chief Consular Officer of the German Empire in such Colony or possession.

Such requisitions may be disposed of, subject always, as nearly as may be, to the provisions of this Treaty, by the said Governor or chief authority, who, however, shall be at liberty either to grant the surrender, or to refer the matter to his Government.

Her Britannic Majesty shall, however, be at liberty to make special arrangements in the British Colonies and foreign possessions for the surrender of German criminals, who may take refuge within such Colonies and foreign possessions, on the basis, as nearly as may be, of the provisions of the present Treaty.

Extradition to British Colonies. The requisition for the surrender of a fugitive criminal from any Colony or foreign possession of Her Britannic Majesty shall be governed by the rules laid down in the preceding Articles of the present Treaty.

XVI.—The present Treaty shall come into force 10 days after its publication in conformity with the forms prescribed by the laws of the High Contracting Parties. It may be terminated by either of the High Contracting Parties, but shall remain in force for 6 months after notice has been given for its termination.

German
Dependencies.

The Treaty shall be ratified, and the ratifications shall be exchanged at London in 4 weeks, or sooner if possible.

Supplementary Treaty, 5th May, 1894.

I.—The provisions of the Extradition Treaty signed between Germany and Great Britain on the 14th May, 1872, shall be applicable to the dependencies of Germany specified in the following Article, in such manner that persons in any of these dependencies, and within the sphere of the authorities established there, who are accused, or who have been convicted, of having committed a criminal act in the territories of Her Britannic Majesty, and persons in any of the aforesaid territories of Her Britannic Majesty, who are accused, or who have been convicted, of having committed a criminal act in any of the dependencies of Germany, shall be mutually extradited in accordance with the provisions of the aforesaid Treaty, in so far as they are not modified by the present Treaty.

Extension of
Treaty of
German
Dependencies.

II.—For the purposes of the present Treaty, the following are the dependencies of Germany referred to in Article I:—

The territories in Africa, in New Guinea, and in the Pacific Ocean which, by agreement between Germany and Great Britain have been, or shall in future be, reserved to Germany as spheres of influence, Protectorates, or possessions.

III.—In place of Article III of the Extradition Treaty of the 14th May, 1872, it is hereby provided, with regard to the dependencies of Germany, that there shall be no obligation to grant the extradition from those dependencies of natives or of subjects of the Empire, and that the British authorities shall be under no obligation to grant the extradition of British subjects who have been accused or convicted of a criminal act in those dependencies.

[The Article is not intended to be substituted for Article III of the Treaty of 1872; it is to be read in lieu of that Article in the application of the Treaty to the German dependencies].

IV.—There shall be no obligation to grant extradition from the dependencies of Germany in cases where, before the extra-

German Dependencies.

dition has taken place, such an application has been received for the transfer of the person in question to the territory of the German Empire as must, according to law, be complied with. The granting of extradition from a dependency of Germany must always be considered as being on the condition that no such application shall have been received before the extradition is carried out. In case the transfer to Germany takes place, it shall, however, be open to the British Government to apply for the extradition of the person concerned from Germany, in accordance with the terms of the Treaty of the 14th May, 1872.

V.—Applications for extradition from dependencies of Germany shall be made through the British Ambassador at Berlin, in accordance with paragraph 1 of Article VIII of the Treaty of the 14th May, 1872, but in the case of persons who are accused, or who have been convicted, of criminal acts in the Colonies or foreign possessions of Her Britannic Majesty, the application for extradition may be made to the chief authority of the dependency of Germany from which the extradition of the persons in question is desired by the chief Consular Officer of Her Britannic Majesty in the dependency in question, if there be a Consular Officer therein, or, if there be none, then by the Governor or other chief authority of the Colony or foreign possession of Her Britannic Majesty concerned. It shall, however, be open to the chief authority of the dependency of Germany to refer to the German Government in case of doubt whether the application for extradition should be complied with.

Applications for the extradition of criminals to one of the dependencies of Germany shall be made in the manner provided in Article VIII, paragraph 1, and Article XV of the Treaty of the 14th May 1872; in case, however, there should be no German Consular Officer in the Colony or foreign possession of Her Britannic Majesty from which the extradition is desired, the application may be made by the Governor or other chief authority of the dependency of Germany which is concerned to the Governor or other chief authority of the Colony or possession concerned.

VI.—The present Treaty shall be ratified, and the ratifications shall be exchanged as soon as possible.

The Treaty shall come into operation 2 months after the exchange of the ratifications, and shall remain in force as long as the Treaty of the 14th May 1872 remains in force, that is, it shall terminate with the termination of that Treaty.

GUATEMALA.

Guatemala.

[Treaty, 4th July, 1885. O. in C. 26th November, 1886.
Acts in force from 13th December, 1886.]

I.—The High Contracting Parties engage to deliver up to each other, under the circumstances and conditions stated in the present Treaty, those persons who, being accused or convicted of any of the crimes or offences enumerated in Article II., committed in the territory of the one Party, shall be found within the territory of the other Party. Agreement to extradite.

II.—The extradition shall be reciprocally granted for the following crimes or offences:— Extradition offences.

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| <p>1. Murder (including assassination, parricide, infanticide, poisoning), or attempt to murder.</p> | <p>1. Homicidio premeditado (incluyendo el asesinato, el parricidio, el infanticidio, el envenenamiento), ó tentativa de homicidio premeditado.</p> |
| <p>2. Manslaughter.</p> | <p>2. Homicidio.</p> |
| <p>3. Administering drugs or using instruments with intent to procure the miscarriage of women.</p> | <p>3. Administracion de drogas ó el uso de instrumentos á fin de ocasioner el aborto en las mujeres.</p> |
| <p>4. Rape.</p> | <p>4. Estupro.</p> |
| <p>5. Aggravated or indecent assault; carnal knowledge of a girl under the age of 10 years; carnal knowledge of a girl above the age of 10 and under the age of 12 years; indecent assault upon any female, or any attempt to have carnal knowledge of a girl under 12 years of age.</p> | <p>5. Atentado al pudor con violencia; relaciones sensuales con una muchacha menor de 10 años; relaciones sensuales con una muchacha mayor de 10 años y menor de 12 años; atentado al pudor con cualquiera mujer ó tentative alguna para tener relaciones sensuales con una muchacha menor de 12 años.</p> |
| <p>6. Kidnapping and false imprisonment, child-stealing, abandoning, exposing, or unlawfully detaining children.</p> | <p>6. Hurto de niños ó adultos para trasportarlos á otro pais ó conservarlos en le mismo (plagio), indebida encarcelacion, abandono, exposicion y encierro ilégal de niños ó adultos.</p> |
| <p>7. Abduction of minors.</p> | <p>7. Rapto de menores.</p> |
| <p>8. Bigamy.</p> | <p>8. Bigamia.</p> |

Guatemala.

9. Wounding, or inflicting grievous bodily harm.
10. Assaulting a Magistrate, or peace or public officer.
11. Threats, by letter or otherwise, with intent to extort money, or other things of value.
12. Perjury, or subornation of perjury.
13. Arson.
14. Burglary or house-breaking, robbery with violence, larceny, or embezzlement.
15. Fraud by a bailee, banker, agent, factor, trustee, director, member, or public officer of any company, made criminal by any law for the time being in force.
16. Obtaining money, valuable security, or goods by false pretences; receiving any money, valuable security, or other property, knowing the same to have been stolen or unlawfully obtained.
- 17.—(a) Counterfeiting or altering money, or bringing into circulation counterfeited or altered money.
- (b) Forgery or counterfeiting or altering or uttering what is forged, counterfeited or altered.
9. Heridas ó golpes graves en el cuerpo.
10. Violencias contra algun Magistrado, oficial de paz ó publico.
11. Amenazas por medio de cartas o de otra manera, con ánimo de obtener indebidamente dinero ú otras cosas le valor.
12. Perjurio, soborno para perjurio.
13. Incendio voluntario.
14. Robo con efraccion, robo con violencia, rateria, y hurto.
15. Fraude cometido por un depositario de bienes, banquero, mandatario, comisionista, administrador de bienes agenos, tutor, curador, liquidador, síndico, oficial ministerial, director, miembro ú oficial público de alguna Compañia, considerado el fraude como criminal por alguna ley vigente.
16. Estafa ó todo lo que sea obtener dinero, fianza ó mercaderias por medio de falsos datos; recibir dinero, fianza ó cualesquiera otros valores, sabiendo que han sido robados ó adquiridos en oposicion á las leyes.
- 17.—(a) Falsificar ó alterar moneda, ó poner en circulacion moneda falsa ó alterada.
- (b) Contrahacer, falsificar ó alterar, ó poner en circulacion lo que está falsificado, contrahecho ó alterado.

(c) Knowingly making, without lawful authority, any instrument, tool, or engine adapted and intended for the counterfeiting of coin of the realm or national coin.

18. Crimes against bankruptcy law.

19. Any malicious act done with intent to endanger persons in a railway train.

20. Malicious injury to property, if such offence be indictable.

21. Crimes committed at sea:—

(a) Piracy, by the law of nations.

(b) Sinking or destroying a vessel at sea, or attempting or conspiring to do so.

(c) Revolt, or conspiracy to revolt, by two or more persons on board a ship on the high seas against the authority of the master.

(d) Assault on board a ship on the high seas with intent to destroy life, or to do grievous bodily harm.

22. Dealing in slaves in such manner as to constitute an offence against the laws of both countries.

The extradition is also to take place for participation in any *Accessories* of the aforesaid crimes as an accessory before or after the fact, provided such participation be punishable by the laws of both Contracting Parties.

III.—No Guatemalan shall be delivered up by the Government of Guatemala to the Government of the United Kingdom,

(c) Hacer premeditadamente, sin permiso de la autoridad constituida, algun instrumento, herramienta ó máquina con la intencion de falsificar ó contrahacer la moneda nacional. Guatemala.

18. Crímenes cometido contra la Ley de Quiebras.

19. Cualquier acto doloso ejecutado con la mira de poner en peligro las personas que viajen en trenes de ferro carriles.

20. Perjuicio malicioso causado á la propiedad, si el delito es justiciable.

21. Delitos cometidos en el mar:—

(a) Pirateria, segun la ley de las naciones.

(b) Echar á pique ó destruir un buque en el mar, ó esforzarse ó conspirar para hacerlo.

(c) Sublevacion ó conspiracion para rebelarse, de dos ó más persons á bordo de un buque, en alta mar, contra la autoridad del capitán.

(d) Ataques á bordo de un buque en alta mar, con intencion de quitar la vida ó de hacer otro daño grave corporal.

22. Darse al Tráfico de Esclavos, si fuese con violacion de las leyes en ámbos países.

- Guatemala.** and no subject of the United Kingdom shall be delivered up by the Government thereof to the Government of Guatemala.
- No extradition if person has been or is being tried.** IV.—The extradition shall not take place if the person claimed on the part of the Government of the United Kingdom, or the person claimed on the part of the Government of Guatemala, has already been tried and discharged or punished, or is still under trial in the territory of Guatemala or in the United Kingdom respectively for the crime for which his extradition is demanded.
- Trial for another offence pending, surrender postponed.** If the person claimed on the part of the Government of the United Kingdom, or on the part of the Government of Guatemala, should be under examination for any other crime in the territory of Guatemala or in the United Kingdom respectively, his extradition shall be deferred until the conclusion of the trial and the full execution of any punishment awarded to him.
- No extradition if offence prescribed.** V.—The extradition shall not take place if, subsequently to the commission of the crime, or the institution of the penal prosecution or the conviction thereon, exemption from prosecution or punishment has been acquired by lapse of time, according to the laws of the State or applied to.
- Political offences.** VI.—A fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded is one of a political character, or if he prove that the requisition for his surrender has, in fact, been made with a view to try or punish him for an offence of a political character.
- Trial after surrender to be limited to extradition offence.** VII.—A person surrendered can in no case be kept in prison or be brought to trial in the State to which the surrender has been made, for any other crime, or on account of any other matters, than those for which the extradition shall have taken place. This stipulation does not apply to crimes committed after the extradition.
- Requisitions.** VIII.—The requisition for extradition shall be made through the Diplomatic Agents of the High Contracting Parties respectively.
- Arrest to be justified by law of extraditing State.** The requisition for the extradition of an accused person must be accompanied by a warrant of arrest issued by the competent authority of the State requiring the extradition, and by such evidence as, according to the laws of the place where the accused is found, would justify his arrest if the crime had been committed there.
- Evidence of conviction.** If the requisition relates to a person already convicted, it must be accompanied by the sentence of condemnation passed against

the convicted person by the competent Court of the State that Guatemala. makes the requisition for extradition.

A requisition for extradition cannot be founded solely on sentences passed *in contumaciam*, but persons convicted for contumacy shall be deemed to be accused persons.

IX.—If the requisition for extradition be in accordance with ^{Arrest of fugitive.} the foregoing stipulations, the competent authorities of the State applied to shall proceed to the arrest of the fugitive.

The prisoner is then to be brought before a competent Magistrate, who is to examine him, and to conduct the preliminary investigation of the case, just as if the apprehension had taken place for a crime committed in the same country.

X.—A fugitive criminal may be apprehended under a warrant ^{Procedure by warrant.} issued by any Police Magistrate, Justice of the Peace, or other competent authority in either country, on such information or complaint, and such evidence, or after such proceedings, as would, in the opinion of the authority issuing the warrant, justify the issue of a warrant if the crime had been committed or the person convicted in that part of the dominions of the two Contracting Parties in which the Magistrate, Justice of the Peace, or other competent authority exercises jurisdiction; provided, however, that in the United Kingdom the accused shall, in such ^{Delay for presenting requisition.} case, be sent as speedily as possible before a Police Magistrate in London. He shall, in accordance with this Article, be discharged, as well in Guatemala as in the United Kingdom, if within the term of 30 days a requisition for extradition shall not have been made by the Diplomatic Agent of his country in accordance with the stipulations of this Treaty.

The same rule shall apply to the cases of persons accused or ^{High sea offences.} convicted of any of the crimes or offences specified in this Treaty, and committed on the high seas on board any vessel of either country which may come into a port of the other.

XI.—The extradition shall take place only if the evidence be ^{Evidence to justify committal for trial in extraditing State.} found sufficient, according to the laws of the State applied to, either to justify the committal of the prisoner for trial, in case the crime had been committed in the territory of the same State, or to prove that the prisoner is the identical person convicted by the Courts of the State which makes the requisition, and no criminal shall be surrendered until the expiration of 15 days from the date of his committal to prison to await the warrant for his surrender.

- Guatemala.** XII.—In the examinations which they have to make in accordance with the foregoing stipulations, the authorities of the State applied to shall admit as entirely valid evidence the sworn depositions or statements of witnesses taken in the other State, or copies thereof, and likewise the warrants and sentences issued therein, provided such documents purport to be signed or certified by a Judge, Magistrate, or officer of such State, and are authenticated by the oath of some witness, or by being sealed with the official seal of the Minister of Justice, or some other Minister of State.
- Evidence taken in claiming State to be admitted.
- Authentication of documents.
- Claims by several States. XIII.—If the individual claimed by one of the two High Contracting Parties in pursuance of the present Treaty, should be also claimed by one or several other Powers on account of other crimes or offences committed upon their respective territories, his extradition shall be granted to that State whose demand is earliest in date; unless any other arrangement should have been made between the different Governments to determine the preference, either on account of the gravity of the crime or offence, or for any other reason.
- Delay for presenting evidence. XIV.—If sufficient evidence for the extradition be not produced within 2 months from the date of the apprehension of the fugitive, he shall be set at liberty.
- Articles seized. XV.—All articles seized, which were in the possession of the person to be surrendered at the time of his apprehension shall, if the competent authority of the State applied to for the extradition has ordered the delivery of such articles, be given up when the extradition takes place; and the said delivery shall extend, not merely to the stolen articles, but to everything that may serve as a proof of the crime.
- Expenses. XVI.—The High Contracting Parties renounce any claim for the reimbursement of the expenses incurred by them in the arrest and maintenance of the person to be surrendered and his conveyance till placed on board ship; they reciprocally agree to bear such expenses themselves.
- Extradition by British Colonies. XVII.—The stipulations of the present Treaty shall be applicable to the Colonies and foreign possessions of Her Britannic Majesty.
- The requisition for the surrender of a fugitive criminal who has taken refuge in any of such Colonies or foreign possessions may be made to the Governor or chief authority of such Colony or possession by the chief Consular Officer of the Republic of Guatemala in such Colony or possession.

Such requisition may be disposed of, subject always, as nearly Guatemala. as may be, to the provisions of this Treaty, by the said Governor or chief authority, who, however, shall be at liberty either to grant the surrender or to refer the matter to his Government.

Her Britannic Majesty shall, however, be at liberty to make special arrangements in the British Colonies and foreign possessions for the surrender of Guatemalan criminals who may take refuge within such Colonies and foreign possessions, on the basis, as nearly as may be, of the provisions of the present Treaty.

The requisition for the surrender of a fugitive criminal from any Colony or foreign possession of Her Britannic Majesty shall be governed by the rules laid down in the preceding Articles of the present Treaty. Extradition to
British Colonies.

XVIII.—The present Treaty shall come into force 10 days after its publication, in conformity with the forms prescribed by the laws of the High Contracting Parties. It may be terminated by either of the High Contracting Parties, but shall remain in force for 6 months after notice has been given for its termination.

The Treaty, after receiving the approval of the Congress of Guatemala, shall be ratified, and the ratifications shall be exchanged at London as soon as possible.

HAYTI.

[Treaty, 7th December, 1874. O. in C. 5th February, 1876.
Acts in force from 21st February, 1876.]

I.—The High Contracting Parties engage to deliver up to each other those persons who, being accused or convicted of a crime committed in the territory of the one Party, shall be found within the territory of the other Party, under the circumstances and conditions stated in the present Treaty. Agreement to
extradite.

II.—The crimes for which the extradition is to be granted, are the following:— Extradition
offences.

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| <p>1. Murder, or attempt to murder.</p> <p>2. Manslaughter.</p> | <p>1. Meurtre, ou tentative de meurtre.</p> <p>2. Homicide.</p> |
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Hayti.

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| <p>3. Counterfeiting or altering money, uttering or bringing into circulation counterfeit or altered money.</p> <p>4. Forgery, or counterfeiting, or altering, or uttering what is forged or counterfeited or altered.</p> <p>5. Embezzlement or larceny,</p> <p>6. Obtaining money or goods by false pretences.</p> <p>7. Malicious injury to property, if the offence be indictable.</p> <p>8. Crimes against bankruptcy law.</p> <p>9. Fraud by a bailee, banker, agent, factor, trustee, or director, or member or public officer of any company, made criminal by any law for the time being in force.</p> <p>10. Perjury or subornation of perjury.</p> <p>11. Rape.</p> <p>12. Abduction.</p> <p>13. Child-stealing.</p> <p>14. False imprisonment.</p> <p>15. Burglary or house-breaking.</p> <p>16. Arson.</p> <p>17. Robbery with violence.</p> <p>18. Threats, by letter or otherwise, with intent to extort.</p> <p>19. Piracy by [the] law of nations.</p> | <p>3. Contrefaction ou altération des monnaies, émission ou mise en circulation de la fausse monnaie ou de la monnaie altérée.</p> <p>4. Le faux, la contrefaction, l'atération ou l'émission de ce qui est faussé, contrefait, ou altéré.</p> <p>5. Détournement ou larcin.</p> <p>6. Obtention d'argent ou de marchandises à l'aide de tromperie.</p> <p>7. Dommages faits aux propriétés avec une intention criminelle.</p> <p>8. Crimes contre la loi sur la banqueroute.</p> <p>9. Fraude par un dépositaire, banquier, un agent, un courtier de commerce; par un curateur, un directeur, un membre ou un officier public d'une compagnie quelconque, déclaré crime par le code pénal en vigueur.</p> <p>10. Parjure ou subornation de témoins.</p> <p>11. Viol.</p> <p>12. Rapt.</p> <p>13. Vol d'enfant.</p> <p>14. Détention illégale.</p> <p>15. Vol avec effraction.</p> <p>16. Incendie.</p> <p>17. Vol avec violence.</p> <p>18. Menace par lettre, ou par tout autre moyen, avec l'intention d'extorquer.</p> <p>19. Piraterie définie par le droit international.</p> |
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Hayti.

20. Sinking or destroying a vessel at sea, or attempting or conspiring to do so.

20. Baraterie ou tentative de baraterie.

21. Assaults on board a ship on the high seas with intent to destroy life, or to do grievous bodily harm.

21. Attaque à bord d'un navire sur la haute mer avec intention de tuer ou de blesser quelqu'un.

22. Revolt or conspiracy to revolt by two or more persons on board a ship on the high seas, against the authority of the master.

22. Révolte ou complot par deux ou plusieurs personnes à bord d'un navire sur la haute mer contre l'autorité du capitaine.

The extradition is also to take place for participation in any of the aforesaid crimes, provided such participation be punishable by the laws of both the Contracting Parties. Accessories.

III.—No Haytian shall be delivered up by the Government of Hayti to the Government of the United Kingdom, and no subject of the United Kingdom shall be delivered up by the Government thereof to the Government of Hayti. Subjects.

IV.—The extradition shall not take place if the person claimed on the part of the Government of the United Kingdom, or the person claimed on the part of the Republic of Hayti, has already been tried and discharged, or punished, or is still under trial in the territory of Hayti or in the United Kingdom respectively, for the crime for which his extradition is demanded. No extradition if person has been or is being tried.

If the person claimed on the part of the Government of the United Kingdom, or if the person claimed on the part of the Government of the Republic of Hayti, should be under examination for any other crime in Hayti or in the United Kingdom respectively, his extradition shall be deferred until the conclusion of the trial, and the full execution of any punishment awarded to him. Trial for another offence pending, surrender postponed.

V.—The extradition shall not take place if, subsequently to the commission of the crime, or the institution of the penal prosecution or the conviction thereon, exemption from prosecution or punishment has been acquired by lapse of time, according to the laws of the State applied to. No extradition if offence prescribed.

VI.—A fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded is one of a political character, or if he prove that the requisition for his surrender has, in fact, been made with a view to try or punish him for an offence of a political character. Political offences.

- Hayti. VII.—A person surrendered can in no case be kept in prison or be brought to trial in the State to which the surrender has been made, for any other crime, or on account of any other matters, than those for which the extradition shall have taken place.
- Trial after surrender to be limited to extradition offence. This stipulation does not apply to crimes committed after the extradition.
- Requisitions. VIII.—The requisition for extradition shall be made through the Diplomatic Agents of the High Contracting Parties respectively.
- Arrest on warrant if justified by law of extraditing State; The requisition for the extradition of an accused person must be accompanied by a warrant of arrest issued by the competent authority of the State requiring the extradition, and by such evidence as, according to the laws of the place where the accused is found, would justify his arrest if the crime had been committed there.
- evidence of conviction. If the requisition relates to a person already convicted, it must be accompanied by the sentence of condemnation passed against the convicted person by the competent Court of the State that makes the requisition for extradition.
- Arrest of fugitive. A requisition for extradition cannot be founded on sentences passed *in contumaciam*.
- IX.—If the requisition for extradition be in accordance with the foregoing stipulations, the competent authorities of the State applied to shall proceed to the arrest of the fugitive.
- The prisoner is then to be brought before a competent magistrate, who is to examine him, and to conduct the preliminary investigation of the case, just as if the apprehension had taken place for a crime committed in the same country.
- Evidence to justify committal for trial in extraditing State. X.—The extradition shall not take place before the expiration of 15 days from the apprehension, and then only if the evidence be found sufficient, according to the laws of the State applied to, either to justify the committal of the prisoner for trial, in case the crime had been committed in the territory of the said State, or to prove that the prisoner is the identical person convicted by the Courts of the State which makes the requisition.
- Evidence taken in claiming State to be admitted. XI.—In the examinations which they have to make in accordance with the foregoing stipulations, the authorities of the State applied to shall admit as entirely valid evidence the sworn depositions or statements of witnesses taken in the other State, or copies thereof, and likewise the warrants and sentences issued therein, provided such documents are signed or certified by a

Judge, magistrate, or officer of such State, and are authenticated by the oath of some witnesses, or by being sealed with the official seal of the Minister of Justice or some other Minister of State. Hayti.
Authentication
of documents.

XII.—If sufficient evidence for the extradition be not produced within 2 months from the date of the apprehension of the fugitive, he shall be set at liberty. Delay for
presenting
evidence.

XIII.—All articles seized, which were in the possession of the person to be surrendered at the time of his apprehension, shall, if the competent authority of the State applied to for the extradition has ordered the delivery thereof, be given up when the extradition takes place, and the said delivery shall extend not merely to the stolen articles, but to everything that may serve as a proof of the crime. Articles seized.

XIV.—The High Contracting Parties renounce any claim for the reimbursement of the expenses incurred by them in the and maintenance of the person to be delivered up, and his conveyance till placed on board ship; they reciprocally agree to bear such expenses themselves. Expenses.

XV.—The stipulations of the present Treaty shall be applicable to the Colonies and foreign possessions of Her Britannic Majesty.

The requisition for the surrender of a fugitive criminal who has taken refuge in any of such Colonies or foreign possessions, shall be made to the Governor or chief authority of such Colony or possession by the chief Consular Officer of Hayti in such Colony or possession. Extradition by
British Colonies.

Such requisition may be disposed of, subject always, as nearly as may be, to the provisions of this Treaty, by the said Governor or chief authority, who, however, shall be at liberty either to grant the surrender or to refer the matter to his Government.

Her Britannic Majesty shall, however, be at liberty to make special arrangements in the British Colonies and foreign possessions for the surrender of Haitian criminals who may take refuge within such Colonies and foreign possessions, on the basis, as nearly as may be, of the provisions of the present Treaty.

The requisitions for the surrender of a fugitive criminal from any Colony or foreign possession of Her Britannic Majesty shall be governed by the rules laid down in the preceding Articles of the present Treaty. Extradition to
British Colonies.

XVI.—The present Treaty shall come into force 10 days after its publication, in conformity with the forms prescribed by the

Hayti. laws of the High Contracting Parties. It may be terminated by either of the High Contracting Parties, but shall remain in force for 6 months after notice has been given for its termination.

The President of the Republic of Hayti engages to apply to the Senate for the necessary authorization to give effect to the present Treaty, immediately after its meeting.

The present Treaty shall be ratified, and the ratifications shall be exchanged as soon as possible.

ITALY.

[Treaty, 5th February, 1873. O. in C. 24th March, 1873.
Acts in force from 11th April, 1873.]

Agreement to extradite.

I.—The High Contracting Parties engage to deliver up to each other reciprocally any persons who, being accused or convicted of any of the crimes specified in the Article following, committed within the territory of either of the said Parties, shall be found within the territory of the other, in the manner and under the conditions determined in the present Treaty.

Extradition offences.

II.—The crimes for which the extradition is agreed to are the following:—

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| <p>1. Murder, or attempt or conspiracy to murder, comprising the crimes designated by the Italian Penal Code as the association of criminals for the commission of such offences.</p> | <p>1. Assassino, o tentativo o cospirazione per assassinare, comprendente i reati designati da Codice Penale Italiano siccome associazione di malfattori per la perpetrations di tali reati.</p> |
| <p>2. Manslaughter, comprising the crimes designated by the Italian Penal Code as wounds and blows wilfully inflicted which cause death.</p> | <p>2. Omicidio volontario, comprendente i reati indicati dal Codice Penale Italiano colla designazione di percosse e ferite volontarie che producano la morte.</p> |
| <p>3. Counterfeiting or altering money, and uttering or bringing into circulation counterfeit or altered money.</p> | <p>3. Contraffazione o alterazione di moneta, e spaccio od emissione di moneta contraffatta o alterata.</p> |

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| <p>4. Forgery, counterfeiting or altering, or uttering of the thing or document that is forged or counterfeited or altered.</p> <p>5. Larceny, or unlawful abstraction or appropriation.</p> <p>6. Obtaining money or goods by false pretences (cheating or fraud).</p> <p>7. Fraudulent bankruptcy.</p> <p>8. Fraud, abstraction, or unlawful appropriation, by a bailee, banker, agent, factor, trustee, director, or member, or officer of any public or private company or house of commerce.</p> <p>9. Rape.</p> <p>10. Abduction.</p> <p>11. Child-stealing.</p> <p>12. Burglary and house-breaking, comprising the crimes designated by the Italian Penal Code as entry by night, or even by day, with fracture or escalade, or by means of false key or other instrument, into the dwelling of another person with intent to commit a crime.</p> <p>13. Arson.</p> <p>14. Robbery with violence.</p> <p>15. Threats by letter or otherwise, with intent to extort money or anything else.</p> <p>16. Piracy, according to international law, when the</p> | <p>4. Falsificazione, contraffazione o alterazione, o emissione della cosa o documento falso, o contraffatto o alterato.</p> <p>5. Furto od indebita sottrazione o appropriazione.</p> <p>6. L'ottenuta consegna di danaro o di oggetti col mezzo di raggio (truffa o frode).</p> <p>7. Bancarotta dolosa.</p> <p>8. Frode, sottrazione o appropriazione indebita, commessa da un depositario, banchiere, agente, amministratore, curatore (<i>trustee</i>), direttore o membro o ufficiale di qualsiasi pubblica o privata compagnia o casa di commercio.</p> <p>9. Ratto (<i>rapt</i>).</p> <p>10. Rapimento di persona (<i>abduction</i>).</p> <p>11. Sottrazione di fanciulli.</p> <p>12. <i>Burglary</i> e <i>house-breaking</i>, comprendendosi sotto queste designazioni secondo la nomenclatura del Codice Penal Italiano, l'atto di chi, di notte tempo o anche di giorno, s'introduce mediante rottura o scalata o per mezzo di chiave falsa od altro strumento, nell'altrui abitazione per commettere un reato.</p> <p>13. Incendio volontario.</p> <p>14. Depravazione con violenza.</p> <p>15. Minacce per lettera o per altro modo per estorcere danaro o altra cosa.</p> <p>16. Pirateria, secondo il diritto internazionale, quando</p> | <p>Italy.</p> |
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Italy.	<p>pirate, a subject of neither of the High Contracting Parties, has committed depredations on the coasts, or on the high seas, to the injury of citizens of the requiring Party, or when, being a citizen of the requiring Party, and having committed acts of piracy, to the injury of a third State, he may be within the territory of the other Party, without being subjected to trial.</p> <p>17. Sinking or destroying, or attempting to sink or destroy, a vessel at sea.</p> <p>18. Assaults on board a ship on the high seas with intent to kill or do grievous bodily harm.</p> <p>19. Revolt or conspiracy by two or more persons on board a ship on the high seas, against the authority of the master.</p>	<p>il pirata, straniero alle due Alte Parti Contraenti, abbia commesso delle depredazioni sulle coste o in alto mare a danno dei cittadini della parte richiedente, ovvero quando, essendo cittadino della parte richiedente ed avendo commesso atti di pirateria in danno di un terzo Stato, egli si trovi nel territorio dell' altra parte senza esservi sottoposto a giudizio.</p> <p>17. Sommersione o distruzione, o tentativo di sommersione a distruzione di nave in mare.</p> <p>18. Assalto a bordo di una nave in alto mare col fine di uccidere o di produrre gravi danni corporali.</p> <p>19. Rivolta, o cospirazione di due o più persone a bordo di una nave in alto mare contro l'autorità del capitano.</p>
Accessories.	<p>Accomplices before the fact in any of these crimes shall, moreover, also be delivered up, provided their complicity be punishable by the laws of both the Contracting Parties.</p>	
Subjects.	<p>III.—The Italian Government shall not deliver up any Italian to the United Kingdom; and no subject of the United Kingdom shall be delivered up by it to the Italian Government.</p>	
Naturalization.	<p>IV.—In any case where an individual convicted or accused shall have obtained naturalization in either of the two Contracting States after the commission of the crime, such naturalization shall not prevent the search for, arrest, and delivery of the individual. The extradition may, however, be refused if 5 years have elapsed from the concession of naturalization, and the individual has been domiciled, from the concession thereof, in the State to which the application is made.</p>	
Political offences.	<p>V.—No accused or convicted person shall be given up if the offence for which he is claimed is political; or if he proves that the demand for his surrender has been made with the intention of trying and punishing him for a political offence.</p>	

VI.—The extradition shall not be granted if, since the com- Italy.
 mission of the crime, the commencement of proceedings, or the No extradition
 conviction, such a length of time has elapsed as to bar the penal if offence
 prosecution or the punishment, according to the laws of the prescribed.
 State to which application is made.

VII.—The accused or convicted person who has been given Trial after
 up shall not, until he has been liberated, or had an opportunity extradition to be
 of returning to the country in which he was living, be imprisoned limited to
 or subjected to trial in the State to which he has been given up, extradition
 for any crime or on any charge other than that on account of offence.
 which the extradition took place.

This does not apply to offences committed after the extradi-
 tion.

VIII.—If the individual claimed is under prosecution or in Where trial for
 custody for a crime committed in the country where he has another offence
 taken refuge, his surrender may be deferred until the law has pending.
 taken its course.

In case he should be proceeded against or detained in such Pendency of
 country on account of obligations contracted with private civil proceedings,
 individuals, or any other civil claim, his surrender shall neverthe-
 less take place, the injured party retaining his right to prosecute
 his claims against him before the competent authority.

IX.—The requisitions for extradition shall be made, respec- Requisition.
 tively, by means of the Diplomatic Agents of the High Contract-
 ing Parties.

The demand for the extradition of an accused person must be Accused persons.
 accompanied by a warrant of arrest issued by the competent
 authority of the State applying for the extradition, and by such
 proof as, according to the law of the place where the fugitive
 is found, would justify his arrest if the crime had been committed
 there.

If the requisition relates to a person convicted, it must be Convicted
 accompanied by the sentence of condemnation of the competent persons.
 Court of the State applying for the extradition.

The demand for extradition must not be founded upon a
 sentence *in contumacia*.

X.—If the demand for extradition be made according to the Arrest.
 foregoing stipulations, the competent authorities of the State,
 to which the requisition is made, shall proceed to arrest the
 fugitive.

The prisoner shall be taken before the competent Magistrate,
 who shall examine him, and make the preliminary investigations

- Italy. of the affair, in the same manner as if the arrest had taken place for a crime committed in the same country.
- Evidence taken in claiming State to be admitted. XI.—In the examinations to be made in conformity with the preceding stipulations, the authorities of the State to which the demand is addressed shall admit, as entirely valid evidence, the documents and depositions taken on oath in the other State, or copies of them, and likewise the warrants and sentences issued there; provided that such documents are signed or certified by a Judge, Magistrate, or officer of such State, and are authenticated by the oath of some witness, or stamped with the official seal of the Department of Justice or some other Department of State.
- Delays for presenting evidence; XII.—If, within 2 months from the arrest of the accused, sufficient evidence be not produced for his extradition he shall be liberated.
- Evidence to justify committal for trial in extraditing State. XIII.—The extradition shall not taken place until the expiration of 15 days after the arrest, and then only if the evidence has been found sufficient, according to the laws of the State to which the demand is addressed, to justify the committal of the prisoner for trial in case the crime had been committed in the territory of that State; or to show that the prisoner is the identical person condemned by the tribunals of the State which demands him.
- Delay for removal of prisoner. XIV.—If the prisoner be not given up and taken away within 2 months from his apprehension or from the decision of the Court upon the demand for a writ of *habeas corpus* in the United Kingdom, he shall be set at liberty, unless sufficient cause be shown for the delay.
- Claims by several States. XV.—If the individual claimed by one of the two Contracting Parties, in conformity with the present Treaty, should be also claimed by another or by other States on account of crimes committed in their territories, his surrender shall in preference, be granted, according to priority of demand, unless an agreement be made between the Governments which make the requisition, either on account of the gravity of the crimes committed, or for any other reason.
- Articles seized. XVI.—Every article found in the possession of the prisoner at the time of his arrest shall be seized, in order to be delivered up with him. Such delivery shall not be limited to the property or articles obtained by the robbery or fraudulent bankruptcy, but shall include everything that may serve as evidence of the crime; and it shall take place even when the extradition, after having

been ordered, cannot take effect either on account of the escape or the death of the delinquent.

Italy.

XVII.—The High Contracting Parties renounce all claim for repayment of the expenses incurred for the arrest and maintenance of the person to be given up, and for his conveyance on board a ship; such expenses shall be borne by themselves respectively.

Expenses.

XVIII.—The stipulations of the present Treaty shall be applicable to the Colonies and foreign possessions of the two High Contracting Parties.

The requisition for the surrender of a person accused or condemned, who has taken refuge in any such Colony or possession of either party, shall be made to the Governor or chief authority of such Colony or possession by the chief Consular Officer of the other residing in such Colony or possession; or, if the accused or condemned person has escaped from a Colony or foreign possession of the party on whose behalf the requisition is made, the requisition shall be made by the Governor or chief authority of such Colony or possession.

Extradition to and from Colonies.

Such requisitions may be disposed of, in accordance, as far as possible, with the stipulations of this Treaty, by the respective Governors or chief authorities, who, however shall be at liberty either to grant the extradition or to refer the matter to their own Government.

Her Britannic Majesty shall nevertheless be at liberty to make special arrangements in the British Colonies and foreign possessions for the surrender to his Italian Majesty of criminals who may have taken refuge in such Colonies or possessions, always in conformity, so far as possible, with the provisions of the present Treaty.

British Colonies.

Finally, it is agreed that this stipulation does not apply to the Island of Malta, the Ordinance of the Maltese Government of [May 3, 1863 (No. 1230)§] remaining in full force.

Malta.

XIX.—The High Contracting Parties declare that the present stipulations apply as well to persons accused or convicted, whose crimes, on account of which the extradition is demanded, may have been committed previously, as to those whose crimes may be committed subsequently to the date of this Treaty.

Crimes previous to Treaty.

§ By a Declaration, dated May 7th, 1873, an error in Art. XVIII. was rectified by substituting the words "the 21st of February, 1863," and "21 Febbraio, 1863," in the Italian text, for the words italicised above.

Note to the Treaty in "Statutory Rules and Orders" Vol. V.

Italy.

XX.—The present Treaty shall come into operation 10 days after its publication according to the forms prescribed by the laws of the High Contracting Parties.

Either party may at any time put an end to this Treaty, which, however, shall remain in force for 6 months after the notice for its termination.

This Treaty shall be ratified, and the ratifications shall be exchanged at Rome within 6 weeks, or sooner if possible.

LIBERIA.

[Treaty, 16th December, 1892. O. in C. 10th March, 1894.
Acts in force from 23rd, March, 1894.]

Agreement to extradite.

I.—The High Contracting Parties engage to deliver up to each other those persons who, being accused or convicted of a crime or offence committed in the territory of the one Party, shall be found within the territory of the other, under the circumstances and conditions stated in the present Treaty.

Extradition offences.

II.—The crimes or offences for which the extradition is to be granted are the following:—

1. Murder, or attempt, or conspiracy to murder.
2. Manslaughter.
3. Assault occasioning actual bodily harm.
4. Maliciously wounding or inflicting grievous bodily harm.
5. Counterfeiting or altering money, or uttering counterfeit or altered money.
6. Knowingly making any instrument, tool, or engine adapted and intended for counterfeiting coin.
7. Forgery, counterfeiting, or altering or uttering what is forged or counterfeited or altered.
8. Embezzlement or larceny.
9. Malicious injury to property if the offence be indictable.
10. Obtaining money, goods, or valuable securities by false pretences.
11. Receiving money, valuable security, or other property, knowing the same to have been stolen, embezzled, or unlawfully obtained.
12. Crimes against bankruptcy law.
13. Fraud by a bailee, banker, agent, factor, trustee, or director or member or public officer of any company, made criminal by any law for the time being in force.

Liberia.

14. Perjury, or subornation of perjury.
15. Rape.
16. Carnal knowledge, or any attempt to have carnal knowledge, of a girl under 16 years of age.
17. Indecent assault.
18. Administering drugs, or using instruments, with intent to procure the miscarriage of a woman.
19. Abduction.
20. Child-stealing.
21. Abandoning children, exposing or unlawfully detaining them.
22. Kidnapping and false imprisonment.
23. Burglary or house-breaking.
24. Arson.
25. Robbery with violence.
26. Any malicious act done with intent to endanger the safety of any person in a railway train.
27. Threats by letter or otherwise, with intent to extort.
28. Piracy by law of nations.
29. Sinking or destroying a vessel at sea, or attempting or conspiring to do so.
30. Assaults on board a ship on the high seas, with intent to destroy life, or do grievous bodily harm.
31. Revolt, or conspiracy to revolt, by two or more persons on board a ship on the high seas, against the authority of the master.
32. Dealing in slaves in such a manner as to constitute a criminal offence against the laws of both States.

Extradition is also to be granted for participation in any of the aforesaid crimes, provided such participation be punishable by the laws of both the Contracting Parties.

III.—Either Government may, in its absolute discretion, refuse to deliver up its own subjects to the other Government. Subjects.

IV.—The extradition shall not take place if the person claimed on the part of Her Majesty's Government, or the person claimed on the part of the Liberian Government, has already been tried and discharged or punished, or is still under trial, within the territories of the two High Contracting Parties respectively, for the crime for which his extradition is demanded. No extradition if person has been or is being tried.

If the person claimed on the part of Her Majesty's Government, or on the part of the Liberian Government, should be under examination, or is undergoing sentence under a conviction, Trial for another offence pending, surrender postponed.

Liberia.	for any other crime within the territories of the two High Contracting Parties respectively, his extradition shall be deferred until after he has been discharged, whether by acquittal, or on expiration of his sentence, or otherwise.
No extradition if offence prescribed.	V.—The extradition shall not take place if, subsequently to the commission of the crime, or the institution of the penal prosecution, or the conviction thereon, exemption from prosecution or punishment has been acquired by lapse of time, according to the laws of the State applied to.
Political offences.	VI.—A fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded is one of a political character, or if he prove that the requisition for his surrender has in fact been made with a view to try or punish him for an offence of a political character.
Trial after surrender to be limited to extradition offence.	VII.—A person surrendered can in no case be kept in prison, or be brought to trial, in the State to which the surrender has been made, for any other crime, or on account of any other matters than those for which the extradition shall have taken place, until he has been restored, or has had an opportunity of returning to the State by which he has been surrendered. This stipulation does not apply to crimes committed after the extradition.
Requisitions.	VIII.—The requisition for extradition shall be made in the following manner;— Application on behalf of Her Britannic Majesty's Government for the surrender of a fugitive criminal in Liberia shall be made by Her Majesty's Consul at Monrovia. Application on behalf of the Liberian Government for the surrender of a fugitive criminal in the United Kingdom shall be made by the diplomatic representative of Liberia in London, or in the absence of such representative, by the Consul-General for Liberia in London.
Arrest to be justified by law of extraditing State.	The requisition for the extradition of the accused person must be accompanied by a warrant of arrest issued by the competent authority of the State requiring the extradition, and by such evidence as, according to the laws of the place where the accused is found, would justify his arrest if the crime had been committed there.
Evidence of conviction.	If the requisition relates to a person already convicted, it must be accompanied by the sentence of condemnation passed against the convicted person by the competent Court of the State that makes the requisition.

A sentence passed *in contumaciam* is not to be deemed a conviction, but a person so sentenced may be dealt with as an accused person. Liberia.

IX.—If the requisition for extradition be in accordance with the foregoing stipulations, the competent authorities of the State applied to shall proceed to the arrest of the fugitive. Arrest.

X.—If the fugitive has been arrested in the British dominions he shall forthwith be brought before a competent magistrate, who is to examine him and to conduct the preliminary investigation of the case, just as if the apprehension had taken place for a crime committed in the British dominions. Procedure in British dominions.

In the examinations which they have to make in accordance with the foregoing stipulations, the authorities of the British dominions shall admit as valid evidence the sworn depositions or the affirmations of witnesses taken in Liberia, or copies thereof, and likewise the warrants and sentences issued therein, and certificates of, or judicial documents stating the fact of, a conviction, provided the same are authenticated as follows:— Evidence taken Liberia to be admitted.

1. A warrant must purport to be signed by a Judge, Magistrate, or officer of Liberia. Authentication of documents.

2. Depositions or affirmations, or the copies thereof, must purport to be certified, under the hand of a Judge, Magistrate, or officer of Liberia, to be the original depositions or affirmations, or to be true copies thereof, as the case may require.

3. A certificate of or judicial document stating the fact of a conviction must purport to be certified by a Judge, Magistrate, or officer of Liberia.

4. In every case such warrant, deposition, affirmation, copy, certificate, or judicial document must be authenticated, either by the oath of some witness, or by being sealed with the official seal of the Minister of Justice, or some other Minister of Liberia; but any other mode of authentication for the time being permitted by the law in the part of the British dominions where the examination is taken may be substituted for the foregoing.

XI.—If the fugitive has been arrested in Liberia his surrender shall be granted if, upon examination by a competent authority, it appears that the documents furnished by the British Government contain sufficient *prima facie* evidence to justify the extradition. Procedure in Liberia.

The authorities of Liberia shall admit as valid evidence records drawn up by the British authorities of the depositions of British evidence to be admitted.

- Liberia.** witnesses, or copies thereof, and records of conviction or other judicial documents, or copies thereof, provided that the said documents be signed or authenticated by an authority whose competence shall be certified by the seal of a Minister of State of Her Britannic Majesty.
- Evidence to justify committal for trial in extraditing State.** XII.—The extradition shall not take place unless the evidence be found sufficient, according to the laws of the State applied to, either to justify the committal of the prisoners for trial, in case the crime had been committed in the territory of the said State, or to prove that the prisoner is the identical person convicted by the Courts of the State which makes the requisition, and that the crime of which he has been convicted is one in respect of which extradition could, at the time of such conviction, have been granted by the State applied to. The fugitive criminal shall not be surrendered until the expiration of 15 days from the date of his being committed prison to await his surrender.
- Claims by several States.** XIII.—If the individual claimed by one of the High Contracting Parties in pursuance of the present Treaty should be also claimed by one or several other Powers on account of other crimes or offences committed upon their respective territories, his extradition shall be granted to the State whose demand is earliest in date.
- Delay for presenting evidence.** XIV.—If sufficient evidence for the extradition be not produced within 3 months from the date of the apprehension of the fugitive, or within such further time as the State applied to, or the proper tribunal thereof, shall direct, the fugitive shall be set at liberty.
- Articles seized.** XV.—All articles seized which were in the possession of the person to be surrendered at the time of his apprehension shall, if the competent authority of the State applied to for the extradition has ordered the delivery thereof, be given up when the extradition takes place, and the said delivery shall extend not merely to the stolen articles, but to everything that may serve as a proof of the crime.
- Expenses.** XVI.—All expenses connected with extradition shall be borne by the demanding State.
- XVII.—The stipulations of the present Treaty shall be applicable to the Colonies and foreign possessions of His Britannic Majesty, so far as the laws in such Colonies and foreign possessions respectively will allow.
- Extradition by British Colonies.** The requisition for the surrender of a fugitive criminal, who has taken refuge in any of such Colonies or foreign possessions,

shall be made to the Governor or chief authority of such Colony or possession by the chief Consular Officer of Liberia, or if there is no such Consular Officer in the Colony, by the Diplomatic Representative of Liberia in London, or in his absence by the Liberian Consul-General.

Liberia.

Such requisition may be disposed of, subject always, as nearly as may be, and so far as the law of such Colony or foreign possession will allow, to the provisions of this Treaty, by the said Governor or chief authority, who, however, shall be at liberty either to grant the surrender, or to refer the matter to his Government.

His Britannic Majesty shall, however, be at liberty to make special arrangements in the British Colonies and foreign possessions for the surrender of criminals from Liberia who may take refuge within such Colonies and foreign possessions, on the basis, as nearly as may be, and so far as the law of such Colony or foreign possession will allow, of the provisions of the present Treaty.

Requisitions for the surrender of a fugitive criminal emanating from any Colony or foreign possession of His Britannic Majesty shall be governed by the rules laid down in the preceding Articles of the present Treaty. Extradition to
British Colonies.

XVIII.—The present Treaty shall come into force 10 days after its publication in conformity with the forms prescribed by the laws of the High Contracting Parties. It may be terminated by either of the High Contracting Parties at any time on giving to the other 6 months notice of its intention to do so.

The treaty shall be ratified, and the ratifications shall be exchanged at London as soon as possible.

LUXEMBURG.

[Treaty, 24th November, 1880. O. in C. 2nd March, 1881.
Acts in force from 15th March, 1881.]

I.—Her Majesty the Queen of the United Kingdom of Great Britain and Ireland engages to deliver up, under the circumstances and on the conditions stipulated in the present Treaty, all persons, and His Majesty the King of the Netherlands, Grand Duke of Luxemburg, so far as concerns the Grand Duchy of Agreement to
extradite.

Luxemburg.

Luxemburg, engages to deliver up under the like circumstances and conditions all persons, excepting subjects of the Grand Duchy, who, having been charged with, or convicted by the tribunals of one of the two High Contracting Parties of any of the crimes or offences enumerated in Article II committed in the territory of the one party, shall be found within the territory of the other.

Extradition
offences.

II.—The crimes for which the extradition is to be granted are the following:—

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| <p>1. Murder (including assassination, parricide, infanticide, poisoning, or attempt to murder).</p> <p>2. Manslaughter.</p> <p>3. Administering drugs or using instruments with intent to procure the miscarriage of women.</p> <p>4. Rape.</p> <p>5. Aggravated or indecent assault. Carnal knowledge of a girl under the age of 10 years; carnal knowledge of a girl above the age of 10 years and under the age of 12 years; indecent assault upon any female or any attempt to have carnal knowledge of a girl under 12 years of age.</p> <p>6. Kidnapping and false imprisonment, child-stealing, abandoning, exposing, or unlawfully detaining children.</p> <p>7. Abduction of minors.</p> <p>8. Bigamy.</p> | <p>1. Meurtre (y compris l'assassinat, le parricide, l'infanticide, l'empoisonnement, ou tentative de meurtre).</p> <p>2. Homicide sans préméditation ou guetapens</p> <p>3. Administration de substances ou emploi d'instruments dans l'intention de provoquer l'avortement.</p> <p>4. Viol.</p> <p>5. Attentat à la pudeur avec violence. Attentat à la pudeur commis avec ou sans violence sur la personne d'une fille âgée de moins de 10 ans, attentat à la pudeur commis avec ou sans violence sur la personne d'une fille âgée de plus de 10 et de moins de 12 ans; attentat à la pudeur avec violence commis sur une personne du sex féminin, ou tentative punie en Angleterre sous le nom ' <i>Attempt to have carnal knowledge of a girl under 12 years of age.</i>'</p> <p>6. Enlèvement et emprisonnement illégal de personnes, vol, abandonnement, exposition ou détention illégale d'enfants.</p> <p>7. Enlèvement de mineurs.</p> <p>8. Bigamie.</p> |
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9. Wounding, or inflicting grievous bodily harm.

10. Assaulting a magistrate or peace or public officer.

11. Threats by letter or otherwise with intent to extort money or other things of value.

12. Perjury or subornation of perjury.

13. Arson.

14. Burglary, or house-breaking, robbery with violence, larceny or embezzlement.

15. Fraud by [a] bailee, banker, agent, factor, trustee, director, member, or public officer of any company, made criminal by any law for the time being in force.

16. Obtaining money, valuable security or goods by false pretences; receiving any money, valuable security, or other property, knowing the same to have been unlawfully obtained.

17.—(a) Counterfeiting or altering money, or bringing into circulation counterfeited or altered money;

(b) Forgery, or counterfeiting or altering or uttering what is forged, counterfeited, or altered;

(c) Knowingly making without lawful authority any instrument, tool, or engine adapted and intended for counterfeiting of coin of the realm.

9. Actes de violence ou sévices ayant causés des blessures graves. Luxemburg.

10. Violences contre un magistrat ou officier public.

11. Menaces écrites ou autres faites en vue d'extorquer de l'argent ou des valeurs.

12. Faux témoignage, ou subornation de témoins.

13. Incendie volontaire.

14. Vol avec effraction, escalade, ou violence; toute soustraction frauduleuse.

15. Fraude par un administrateur, banquier, agent, procureur, tuteur, ou curateur, directeur, membre, ou fonctionnaire d'une société quelconque, pour autant que le fait est puni par les lois en vigueur.

16. Escroquerie d'argent, de valeurs ou de marchandises sous de faux prétextes; recel d'argent, de valeurs, ou d'autres propriétés, avec connaissance de leur provenance illégitime.

17.—(a) Contrefaçon ou altération de monnaie, ou mise en circulation de la monnaie contrefaite ou altérée;

(b) Faux, contrefaçon ou altération, ou mise en circulation de ce qui est falsifié, contrefait, ou altéré,

(c) Fabrication avec connaissance de cause, en dehors de l'autorisation légale, d'un instrument, outil, ou engin destiné à la contrefaçon de la monnaie du pays.

<u>Luxemburg.</u>	18. Crimes against bankruptcy law.	18. Crimes contre les lois sur les banqueroutes.
	19. Any malicious act done with intent to endanger persons in a railway train.	19. Toute acte commis avec intention de mettre en danger la vie de personnes se trouvant dans un train de chemin de fer.
	20. Malicious injury to property, if such offence be indictable.	20. Atteinte à la propriété, avec mauvaise intention, pour autant que le fait est punissable par les lois.
Accessories.	The extradition is also to take place for participation in any of the aforesaid crimes, as an accessory before or after the fact, provided such participation be punishable by the laws of both Contracting Parties.	
No extradition if person has been or is being tried.	III.—The extradition shall not take place if the person claimed on the part of the Government of the United Kingdom, or the person claimed on the part of the Government of the Grand Duchy of Luxemburg, has already been tried and discharged or punished, or is still under trial, in the Grand Duchy or in the United Kingdom respectively, for the crime for which his extradition is demanded.	
Trial for another offence pending, surrender postponed.	If the person claimed on the part of the Government of the United Kingdom, or if the person claimed on the part of the Government of the Grand Duchy of Luxemburg, should be under examination for any other crime in the Grand Duchy or in the United Kingdom respectively, his extradition shall be deferred until the conclusion of the trial, and the full execution of any punishment awarded to him.	
No extradition if offence prescribed.	IV.—The extradition shall not take place if, subsequently to the commission of the crime, or the institution of the penal prosecution, or the conviction thereon, exemption from prosecution or punishment has been acquired by lapse of time, according to the laws of the State applied to.	
Political offences.	V.—A fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded is one of a political character, or if he prove that the requisition for his surrender has in fact been made with a view to try or punish him for an offence of a political character.	
Trial after surrender to be limited to extradition offence.	VI.—A person surrendered can in no case be kept in prison, or be brought to trial in the State to which the surrender has been made, for any other crime or on account of any other matters than those for which the extradition shall have taken	

place, until he has been restored or has had the opportunity of returning to the country from whence he was surrendered. Luxemburg.

The period of one month shall be considered as the limit of the period during which the prisoner may, with the view of securing the benefits of this Article, return to the country from whence he was surrendered.

This stipulation does not apply to crimes committed after the extradition.

VII.—The requisition for extradition must always be made by the way of diplomacy, and to wit, in the Grand Duchy of Luxemburg by the British Minister in Luxemburg, and in the United Kingdom to the Secretary of State for Foreign Affairs by the Foreign Minister in Great Britain, who, for the purposes of this Treaty, is recognised by Her Majesty as a Diplomatic Representative of the Grand Duchy of Luxemburg. Requisitions.

The requisition for the extradition of an accused person must be accompanied by a warrant of arrest issued by the competent authority of the State requiring the extradition, and by such evidence as, according to the laws of the place where the accused is found, would justify his arrest if the crime had been committed there. Arrest if justified by law of extraditing State;

If the requisition relates to a person already convicted, it must be accompanied by the sentence of condemnation passed against the convicted person by the competent Court of the State that makes the requisition for extradition. or by evidence of conviction.

A requisition for extradition cannot be founded on sentences passed *in contumaciam*.

VIII.—If the requisition for extradition be in accordance with the foregoing stipulations, the competent authorities of the State applied to shall proceed to the arrest of the fugitive. Arrest.

The prisoner is then to be brought before a competent magistrate, who is to examine him and to conduct the preliminary investigation of the case, according to the laws of the country in which he is found.

IX.—The extradition shall not take place before the expiration of 15 days from the date of the fugitive criminal's committal to prison to await his surrender, and then only if the evidence produced in due time be found sufficient according to the laws of the State applied to. Evidence to justify committal for trial in extraditing State.

X.—A criminal fugitive may, however, be apprehended under a warrant issued by any Police Magistrate, Justice of the Peace, or other competent authority in either country, on such Procedure by warrant.

- Luxemburg.** information or complaint, and such evidence, or after such proceedings, as would, in the opinion of the authority issuing the warrant, justify the issue of a warrant if the crime had been committed or the person convicted in that part of the dominions of the two Contracting Parties in which he exercises jurisdiction; Provided however that, in the United Kingdom, the accused shall in such case be sent as speedily as possible before a Police Magistrate in London. He shall be discharged as well in the United Kingdom as in the Grand Duchy of Luxemburg, if, within 14 days, a requisition shall not have been made for his surrender by the Diplomatic Agent of his country.
- Delay for presenting requisition.** XI.—If, in any criminal matter, pending in any Court or tribunal of one of the two countries, it is thought desirable to take the evidence of any witness in the other, such evidence may be taken by the judicial authorities in accordance with the laws in force on this subject in the country where the witness may be.
- Each country to take evidence for the other.** XII.—All articles seized, which were in the possession of the person to be surrendered at the time of his apprehension, shall, if the competent authority of the State applied to for the extradition has ordered the delivery thereof, be given up when the extradition takes place; and the said delivery shall extend not merely to the stolen articles, but to everything that may serve as a proof of the crime.
- Articles seized.** XIII.—The High Contracting Parties renounce any claim for the reimbursement of the expenses incurred by them in the arrest and maintenance of the person to be surrendered, and his conveyance till placed on board ship, as well as for the reimbursement of the expenses incurred in taking the evidence of any witness in consequence of Article XI, and in giving up and returning seized articles. They reciprocally agree to bear such expenses themselves.
- Expenses.** XIV.—The stipulations of the present Treaty shall be applicable to the Colonies and foreign possessions of Her Britannic Majesty.
- Extradition from British Colonies.** The requisition for the surrender of a fugitive criminal who has taken refuge in any of such Colonies or foreign possessions shall be made to the Governor or to the supreme authority of such Colony or possession through the Luxemburg Consul, or, in case there should be no Luxemburg Consul, through the Consular Agent of another State charged for the occasion with Luxemburg interests in the Colony or possession in question, and recognised by such Governor or supreme authority as such.

The Governor or supreme authority above mentioned shall Luxemburg. decide with regard to such requisitions as nearly as possible in accordance with the provisions of this Treaty. He will, however, be at liberty either to consent to the extradition or report the case to his Government.

Her Britannic Majesty shall, however, be at liberty to make special arrangements in the British Colonies and foreign possessions for the surrender of such individuals as shall have committed in the Grand Duchy of Luxemburg any of the crimes hereinafore mentioned, who may take refuge within such Colonies and foreign possessions, on the basis, as nearly as may be, of the provisions of the present Treaty.

The requisition for the surrender of a fugitive criminal from any Colony or foreign possession of Her Britannic Majesty shall Extradition to British Colonies. be governed by the rules laid down in the preceding Articles of the present Treaty.

XV.—The present Treaty shall come into force 10 days after its publication in conformity with the forms prescribed by the laws of the High Contracting Parties. It may be terminated by either of the High Contracting Parties, but shall remain in force for 6 months after notice has been given for its termination.

The Treaty shall be ratified, and the ratifications shall be exchanged at Brussels as soon as possible.

MEXICO.

[Treaty, 17th September, 1886. O. in C. 6th April, 1889.
Acts in force from 19th April, 1889.]

I.—The High Contracting Parties engage to deliver up to each other, under the circumstances and conditions stated in the present Treaty, those persons who, being accused or convicted of any of the crimes or offences enumerated in Article II., committed in the territory of the one Party, shall be found within the territory of the other Party. Agreement to extradite.

II.—Extradition shall be reciprocally granted for the following crimes or offences:— Extradition offences.

1. Murder (including assassination, parricide, infanticide, 1. Homicidio calificado (comprendiéndose el asesinato, el

- Mexico. poisoning), or attempt or conspiracy to murder.
2. Manslaughter.
 3. Administering drugs or using instruments with intent to procure the miscarriage of women.
 4. Rape.
 5. Carnal knowledge, or any attempt to have carnal knowledge, of a girl under 16 years of age, if the evidence produced justifies committal for those crimes according to the laws of both the Contracting Parties.
 6. Indecent assault.
 7. Kidnapping and false imprisonment, child-stealing.
 8. Abduction.
 9. Bigamy.
 10. Maliciously wounding or inflicting grievous bodily harm.
 11. Assault occasioning actual bodily harm.
 12. Threats, by letter or otherwise, with intent to extort money or other things of value.
 13. Perjury or subornation of perjury.
 14. Arson.
 15. Burglary or housebreaking, robbery with violence, larceny, or embezzlement.
 16. Fraud by a bailee, banker, agent, factor, trustee,
- parricidio, el infanticidio, el envenenamiento); ó el conato de homicidio calificado; ó lo colusion para cometerlo.
2. Homicidio simple.
 3. El empleo de sustancias ó el uso de instrumentos con el fin de procurar el aborto.
 4. Violacion.
 5. Cópula ó conato de cópula con una jóven menor de diez y seis años de edad, si la prueba producida justifica la prision por esos delitos, conforme á las leyes de ambas Partes Contratantes.
 6. Atentado contra el pudor.
 7. Plagio; detencion ó prision ejecutada con falsedad; robo de niños.
 8. Rapto.
 9. Bigamia.
 10. Heridas ó golpes que ocasionen graves lesiones, unas y otros dados intencionalmente.
 11. Agresion violenta contra las personas, causándoles algun daño corporal.
 12. Amenazas en cartas ó hechas en otra forma, con el fin de obtener dinero ú otros objetos de valor.
 13. Perjurio ó soborno para que se cometa perjurio.
 14. Incendio voluntario.
 15. Allanamiento de morada; robo con violencia, robo sin violencia, peculado y abuso de confianza.
 16. Fraudes cometidos por los que reciben alguna cosa

director, member, or public officer of any company, made criminal by any law for the time being in force.

17. Obtaining money, valuable security, or goods by false pretences: receiving any money, valuable security, or other property, knowing the same to have been stolen or unlawfully obtained.

18.—(a) Counterfeiting or altering money, or bringing into circulation counterfeited or altered money.

(b) Forgery, or counterfeiting or altering, or uttering what is forged, counterfeited, or altered.

(c) Knowingly making, without lawful authority, any instrument, tool, or engine, adapted and intended for the counterfeiting of coin of the realm.

19. Crimes against bankruptcy law.

20. Any malicious act done with intent to endanger the safety of any person travelling or being upon a railway.

21. Malicious injury to property if such offence be indictable.

mueble en depósito ó con otro fin, siempre que no se transfiera el dominio; por los banqueros, agentes, factores, tenedores-administradores de bienes, directores, miembros ó empleados de una compañía; y que tengan el carácter de delito conforme á las leyes vigentes al verificarse el hecho.

17. Estafa: receptacion de dinero, valores, ú otros bienes robados, ú obtenidos ilegalmente.

18.—(a) La falsificacion ó alteracion de la moneda; ó poner en circulacion moneda falsa ó alterada.

(b) La falsificacion de documentos públicos ó privados, ó poner en circulacion documentos falsos ó falsificados.

(c) Fabricar á sabiendas, sin autoridad legal, algun instrumento, utensilio ó máquina propio y adecuado para falsificar moneda de los Estados respectivos.

19. Delitos contra las leyes de quiebra.

20. Todo acto intencional ejecutado con el propósito de poner en peligro la seguridad de cualquiera persona que viaje ó esté en un ferrocarril.

21. Daños intencionales causados á la propiedad, siempre que el liecho motive un procedimiento criminal.

Mexico.

Mexico.

22. Crimes committed at sea:—

(a) Piracy by the law of nations.

(b) Sinking or destroying a vessel at sea, or attempting or conspiring to do so.

(c) Revolt, or conspiracy to revolt, by two or more persons on board a ship on the high seas against the authority of the master.

(d) Assault on board a ship on the high seas with intent to destroy life, or to do grievous bodily harm.

23. Dealing in slaves in such manner as to constitute a criminal offence against the laws of both States.

The extradition is also to be granted for participation in any of the aforesaid crimes, provided such participation be punishable by the laws of both Contracting Parties.

Extradition may also be granted at the discretion of the State applied to in respect of any other crime for which, according to the laws of both the Contracting Parties for the time being in force, the grant can be made.

Subjects.

III.—Either Government may, in its absolute discretion, refuse to deliver up its own subjects to the other Government.

No extradition if person has been or is being tried.

IV.—The extradition shall not take place if the person claimed on the part of Her Majesty's Government, or the person claimed on the part of the Government of Mexico, has already been tried and discharged, or punished, or is still under trial in the territory of Mexico or in the United Kingdom respectively, for the crime for which his extradition is demanded.

Trial for another offence pending, surrender postponed.

If the person claimed on the part of Her Majesty's Government, or if the person claimed on the part of the Government of Mexico should be under examination for any other crime in territory of Mexico, or in the United Kingdom respectively, his

22. Delitos cometidos en alta mar:—

(a) Piratería conforme al derecho de gentes.

(b) Echar á pique ó destruir un buque en el mar; ó coludirse para hacerlo, ó el conato de estos delitos.

(c) Amotinarse, ó coludirse con el mismo fin, por dos ó mas personas á bordo de un buque en alta mar, contra la autoridad del capitán ó patron.

(d) Agresion violenta á bordo de un buque en alta mar con el propósito de privar de la vida ó causar graves lesiones corporales.

23. Tráfico de esclavos en términos que constituya un delito contra las leyes de ambos Estados.

extradition shall be deferred until the conclusion of the trial, and the full execution of any punishment awarded to him. Mexico.

V.—The extradition shall not take place if, subsequently to the commission of the crime, or the institution of the penal prosecution or the conviction thereon, exemption from prosecution or punishment has been acquired by lapse of time, according to the laws of the State applied to. No extradition if offence prescribed.

VI.—A fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded is one of a political character, or if he prove that the requisition for his surrender has, in fact, been made with a view to try or punish him for an offence of a political character. Political offences.

VII.—A person surrendered shall in no case be kept in prison or be brought to trial in the State to which the surrender has been made, for any other crime, or on account of any other matters, than those for which the extradition shall have taken place, until he has been restored, or has had an opportunity of returning to the State by which he has been surrendered. This stipulation does not apply to crimes committed after the extradition. Trial after surrender to be limited to extradition offence.

VIII.—The requisition for extradition shall be made through the Diplomatic Agents of the High Contracting Parties respectively. Requisitions.

The requisition for the extradition of an accused person must be accompanied by a warrant of arrest issued by the competent authority of the State requiring the extradition, and by such evidence as, according to the laws of the place where the accused is found, would justify his arrest if the crime had been committed there. Arrest to be justified by law of extraditing State;

If the requisition relates to a person already convicted, it must be accompanied by the sentence of condemnation passed against the convicted person by the competent Court of the State that makes the requisition for extradition. evidence of conviction.

A sentence passed *in contumaciam* is not to be deemed a conviction, but a person so sentenced may be dealt with as an accused person.

IX.—If the requisition for extradition be in accordance with the foregoing stipulations, the competent authorities of the State applied to shall proceed to the arrest of the fugitive. Arrest.

X.—A fugitive criminal may be apprehended under a warrant issued by any Police Magistrate, Justice of the Peace, or other competent authority in either country, on such information or Procedure by warrant.

- Mexico.** complaint, and such evidence, or after such proceedings as would, in the opinion of the authority issuing the warrant, justify the issue of a warrant if the crime had been committed, or the person convicted in that part of the dominions of the two Contracting Parties in which the Magistrate, Justice of the Peace, or other competent authority exercises jurisdiction; provided, however, that in the United Kingdom the accused shall, in such case, be sent as speedily as possible before a Police Magistrate in London. In the Republic of Mexico the Government will decide on the extradition by administrative procedure, until a judicial procedure be established by law, when the accused will be delivered as soon as possible to the Judge designated by law. The criminal shall, in accordance with this Article, be discharged, as well in Mexico as in the United Kingdom, if within the term of 30 days a requisition for extradition shall not have been made by the Diplomatic Agent of his country, in accordance with the stipulations of this Treaty.
- Delay for presenting requisition.**
- High sea offences.** The same rule shall apply to the cases of persons accused or convicted of any of the crimes or offences specified in this Treaty, and committed on the high seas on board any vessel of either country which may come into a port of the other.
- Evidence to justify committal for trial in extraditing State.** XI.—The extradition shall take place only if the evidence be found sufficient, according to the laws of the State applied to, either to justify the committal of the prisoner for trial, in case the crime had been committed in the territory of the same State, or to prove that the prisoner is the identical person convicted by the Courts of the State which makes the requisition, and that the crime of which he has been convicted is one in respect of which extradition could, at the time of such conviction, have been granted by the State applied to: and no criminal shall be surrendered until after the expiration of 15 days from the date of his committal to prison to await the warrant for his surrender.
- Evidence taken in claiming State to be admitted.** XII.—In the examinations which they have to make in accordance with the foregoing stipulations, the authorities of the State applied to shall admit as valid evidence the depositions or statements of witnesses taken in the other State, under oath or under solemn affirmation to tell the truth, according as its legislation may provide, or the copies of these depositions and statements, and likewise the warrants issued and sentences pronounced in the State which demands the extradition, the certificates of the fact of a condemnation, or the judicial

documents which prove it, provided the same are authenticated as follows:— Mexico.

1. A warrant must purport to be signed by a Judge, Magistrate, or officer of the other State. Authentication of documents.

2. Depositions or affirmations, or the copies thereof, must purport to be certified under the hand of a Judge, Magistrate, or officer of the other State, to be the original depositions or affirmations, or to be true copies thereof, as the case may require.

3. A certificate of, or a judicial document stating the fact of a conviction, must purport to be certified by a Judge, Magistrate, or officer of the other State.

4. In every case, such warrant, deposition, affirmation, copy, certificate, or judicial document must be authenticated either by the oath of some witness, or by being sealed with the official seal of the Minister of Justice, or some other Minister of the other State; but any other mode of authentication for the time being permitted by law in the State where the examination is substituted for the foregoing.

XIII.—If the individual claimed by one of the two High Contracting Parties, in pursuance of the present Treaty, should be also claimed by one or several other Powers, on account of other crimes or offences committed upon their respective territories, his extradition shall be granted to that State whose demand is earliest in date. Claims by several States.

XIV.—If sufficient evidence for the extradition be not produced within 2 months from the date of the apprehension of the fugitive, or within such further time as the State applied to, or the proper tribunal thereof, shall direct, the fugitive shall be set at liberty. Delay for presenting evidence.

XV.—All articles seized which were in the possession of the person to be surrendered at the time of his apprehension shall, if the competent authority of the State applied to for the extradition has ordered the delivery of such articles, be given up when the extradition takes place; and the said delivery shall extend, not merely to the stolen articles, but to everything that may serve as a proof of the crime. Articles seized.

XVI.—All expenses connected with extradition shall be borne by the demanding State. Expenses.

XVII.—The stipulations of the present Treaty shall be applicable to the Colonies and foreign possessions of Her Britannic Majesty, so far as the laws for the time being in force in such Colonies and foreign possessions respectively will allow.

Mexico.

Extradition from
British Colonies.

The requisition for the surrender of a fugitive criminal who has taken refuge in any of such Colonies or foreign possessions shall be made to the Governor or chief authority of such Colony or possession by the chief Consular Officer of the Republic of Mexico in such Colony or possession.

Such requisition may be disposed of, subject always, as nearly as may be, and so far as the law of such Colony or foreign possession will allow, to the provisions of this Treaty, by the said Governor or chief authority, who, however, shall be at liberty either to grant the surrender or to refer the matter to his Government.

Her Britannic Majesty, shall however, be at liberty to make special arrangements in the British Colonies and foreign possessions for the surrender of Mexican criminals who may take refuge within such Colonies and foreign possessions, on the basis, as nearly as may be, and so far as the law of such Colony or foreign possession will allow, of the provisions of the present Treaty.

Extradition to
British Colonies.

Requisitions for the surrender of a fugitive criminal emanating from any Colony or foreign possession of Her Britannic Majesty shall be governed by the rules laid down in the preceding Articles of the present Treaty.

XVIII.—The present Treaty shall come into force 10 days after its publication, in conformity with the forms prescribed by the laws of the High Contracting Parties. It may be terminated by either of the High Contracting Parties by a notice not exceeding one year and not less than 6 months.

The Treaty, after receiving the approval of the Congress of Mexico, shall be ratified, and the ratifications shall be exchanged at Mexico as soon as possible.

MONACO.

[Treaty, 17th December, 1891. O. in C. 9th May, 1892.
Acts in force from 23rd May, 1892.]

Agreement to
extradite.

I.—The High Contracting Parties engage to deliver up to each other those persons who, being accused or convicted of a crime or offence committed in the territory of the one Party, shall be found within the territory of the other Party, under the circumstances and conditions stated in the present Treaty.

II.—The crimes or offences for which the extradition is to be granted are the following:— Monaco.

1. Murder, or attempt, or conspiracy to murder.

2. Manslaughter.

3. Assault occasioning actual bodily harm. Malicious wounding or inflicting grievous bodily harm.

4. Counterfeiting or altering money, or uttering counterfeit or altered money.

5. Knowingly making any instrument, tool, or engine adapted and intended for counterfeiting coin.

6. Forgery, counterfeiting, or altering or uttering what is forged, or counterfeited or altered.

7. Embezzlement or larceny.

8. Malicious injury to property if the offence be indictable.

9. Obtaining money, goods, or valuable securities by false pretences.

10. Receiving money, valuable security, or other property knowing the same to have been stolen, embezzled, or unlawfully obtained.

11. Crimes against bankruptcy law.

1. Assassinat, tentative et complicité d'assassinat, ou complot ayant ce crime pour but. Extradition
offences.

2. Homicide sans préméditation ou guet-apens.

3. Voies de fait ayant occasionné des lésions corporelles.

4. Contrefaçon, altération de monnaies, et mise en circulation de monnaies contrefaites ou altérées.

5. Fabrication avec connaissance de cause d'un instrument, outil, ou engin destiné à la contrefaçon de la monnaie du pays.

6. Faux, contrefaçon, altération ou mise en circulation de pièces, effets ou écritures publics ou privés falsifiés, contrefaits, ou altérés.

7. Soustraction frauduleuse ou vol.

8. Destruction ou dégradation de toute propriété, lorsque le fait incriminé est punissable de peines criminelles ou correctionnelle.

9. Escroquerie d'argent, valeurs, ou d'autres objets, sous de faux prétextes.

10. Recel en connaissance de cause de numéraire, valeurs ou autres objets volés, provenant de soustractions, d'escroquerie ou d'abus de confiance.

11. Banqueroute frauduleuse et fraudes commise dans les faillites.

Monaco.

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| <p>12. Fraud by a bailee, banker, agent, factor, trustee, or director, or member or public officer of any company.</p> <p>13. Perjury, or subornation of perjury.</p> <p>14. Rape.</p> <p>15. Carnal knowledge, or any attempt to have carnal knowledge, of a girl under 16 years of age, so far as such acts are punishable by the law of the State upon which the demand is made.</p> <p>16. Indecent assault. Indecent assault without violence upon children of either sex under 13 years of age.</p> <p>17. Administering drugs or using instruments with intent to procure the miscarriage of a woman.</p> <p>18. Abduction.</p> <p>19. Child-stealing.</p> <p>20. Abandoning children, exposing or unlawfully detaining them.</p> <p>21. Kidnapping and false imprisonment.</p> <p>22. Burglary or house-breaking.</p> <p>23. Arson.</p> <p>24. Robbery with violence.</p> <p>25. Any malicious act done with intent to endanger the safety of any person in a railway train.</p> | <p>12. Abus de confiance (com-
mis par un dépositaire, admini-
strateur, banquier, fidéi-com-
missaire, mandataire, commis-
sionnaire, membre ou fondateur
d'une société quelconque).</p> <p>13. faux serment ou subor-
nation de témoins.</p> <p>14. Viol.</p> <p>15. Commerce charnel avec
une jeune fille âgée de moins de
16 ans, ou tentative de ce fait,
en tant que les faits sont
punissables d'après la loi du
pays requis.</p> <p>16. Attentat à la pudeur avec
violence. Attentat à la pudeur
sans violence sur des enfants de
l'un ou l'autre sexe, âgés de
moins de 13 ans.</p> <p>17. Administration de sub-
stances ou emploi d'instruments
dans l'intention de provoquer
l'avortement.</p> <p>18. Enlèvement ou détourne-
ment de mineurs.</p> <p>19. Vol d'enfants.</p> <p>20. Abandon, exposition, ou
séquestration illégale d'enfants.</p> <p>21. Séquestration ou déten-
tion illégale.</p> <p>22. Vol avec effraction,
escalade, ou à l'aide de fausses
clefs.</p> <p>23. Incendie volontaire.</p> <p>24. Vol avec violence.</p> <p>25. Tout acte commis avec
intention de mettre en danger la
vie de personnes se trouvant
dans un train de chemin de fer.</p> |
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26. Threats by letter, or otherwise, with intent to extort.

27. Piracy by [the] law of nations.

28. Sinking or destroying a vessel at sea, or attempting or conspiring to do so.

29. Assaults on board a ship on the high seas, with intent to destroy life, or to do grievous bodily harm.

30. Revolt, or conspiracy to revolt, by two or more persons on board a ship on the high seas against the authority of the master.

31. Dealing in slaves in such a manner as to constitute a criminal offence against the laws of both State.

26. Menaces, écrites ou autres, faites en vue d'extorsion.

27. Piraterie considérée comme crime par le droit des gens.

28. Submersion, échouement, ou destruction d'un navire en mer, ou tentative ou complot ayant ce crime pour but.

29. Attaque à bord d'un navire en haute mer dans le but d'homicide ou afin de porter de graves lésions corporelles.

30. Révolte, ou complot en vue de révolte, commis par deux ou plusieurs personnes à bord d'un navire en haute mer, contre l'autorité du capitaine.

31. Traite des esclaves telle qu'elle est punie par les lois des deux pays.

Monaco.

Extradition is also to be granted for participation in any of the aforesaid crimes, provided such participation be punishable by the laws of both the Contracting Parties.

Extradition may also be granted, at the discretion of the State applied to, in respect of any other crime for which, according to the laws of both the Contracting Parties for the time being in force, the grant can be made.

III.—Either Government may, in its absolute discretion, refuse to deliver up its own subjects to the other Government.

IV.—The extradition shall not take place if the person claimed on the part of the Government of the United Kingdom, or the person claimed on the part of the Government of Monaco, has already been tried and discharged or punished, or is still under trial within the territories of the two High Contracting Parties respectively, for the crime for which his extradition is demanded.

If the person claimed on the part of the Government of the United Kingdom, or on the part of the Government of Monaco, should be under examination, or is undergoing sentence under a conviction, for any other crime within the territories of two High

Accessories.

Other offences.

Subjects.

No extradition if person has been or is awaiting tried.

Trial for another offence pending, surrender postponed.

<u>Monaco.</u>	Contracting Parties respectively, his extradition shall be deferred until after he has been discharged, whether by acquittal or on expiration of his sentence, or otherwise.
No extradition if offence prescribed.	V.—The extradition shall not take place if, subsequently to the commission of the crime, or the institution of the penal prosecution, or the conviction thereon, exemption from prosecution or punishment has been acquired by lapse of time, according to the laws of the State applied to.
Political offences.	VI.—A fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded is one of a political character, or if he prove that the requisition for his surrender has in fact been made with a view to try or punish him for an offence of a political character.
Trial after extradition to be limited to extradition offence.	VII.—A person surrendered can in no case be kept in prison, or be brought to trial in the State to which the surrender has been made, for any other crime, or on account of any other matters than those for which the extradition shall have taken place, until he has been restored or had an opportunity of returning to the State by which he has been surrendered. This stipulation does not apply to crimes committed after the extradition.
Requisitions.	VIII.—The requisition for extradition shall be made in the following manner:— Applications on behalf of Her Britannic Majesty's Government for the surrender of a fugitive criminal in Monaco shall be made by Her Majesty's Consul in the Principality. Application on behalf of the Principality of Monaco for the surrender of a fugitive criminal in the United Kingdom shall be made by the Consul-General of Monaco in London.
Arrest to be justified by law of extraditing State.	The requisition for the extradition of an accused person must be accompanied by a warrant of arrest issued by the competent authority of the State requiring the extradition, and by such evidence as, according to the laws of the place where the accused is found, would justify his arrest if the crime had been committed there.
Evidence of conviction.	If the requisition relates to a person already convicted, it must be accompanied by the sentence of condemnation passed against the convicted person by the competent Court of the State that makes the requisition for extradition. A sentence passed <i>in contumaciam</i> is not to be deemed a conviction, but a person so sentenced may be dealt with as an accused person.

IX.—If the requisition for extradition be in accordance with the foregoing stipulations, the competent authorities of the State applied to shall proceed to the arrest of the fugitive. Monaco.

Arrest.

X.—If the fugitive has been arrested in the British dominions, he shall forthwith be brought before a competent Magistrate, who is to examine him and to conduct the preliminary investigation of the case, just as if the apprehension had taken place for a crime committed in the British dominions. Procedure in
British
dominions.

In the examinations which they have to make in accordance with the foregoing stipulations, the authorities of the British dominions shall admit as valid evidence the sworn depositions or the affirmations of witnesses taken in Monaco, or copies thereof, and likewise the warrants and sentences issued therein, and certificates of, or judicial documents stating the fact of, a conviction, provided the same are authenticated as follows:— Evidence taken
in Monaco to be
admitted.

1. A warrant must purport to be signed by a Judge, Magistrate, or officer of the Principality of Monaco. Authentication
of documents.

2. Depositions, or affirmations, or the copies thereof, must purport to be certified, under the hand of a Judge, Magistrate, or officer of the Principality of Monaco, to be the original depositions or affirmations, or to be true copies thereof, as the case may require.

3. A certificate of or judicial document stating the fact of a conviction must purport to be certified by a Judge, Magistrate, or officer of the Principality of Monaco.

4. In every case such warrant, deposition, affirmation, copy, certificate, or judicial document must be authenticated either by the oath of some witness, or by being sealed with the official seal and legalization of the Governor-General of the Principality of Monaco; but any other mode of authentication for the time being permitted by the law in that part of the British dominions where the examination is taken, may be substituted for the foregoing.

XI.—If the fugitive has been arrested in the Principality of Monaco, his surrender shall be granted if, upon examination by a competent authority it appears that the documents furnished by the British Government contain sufficient *prima facie* evidence to justify the extradition. Procedure in
Monaco.

The authorities of the Principality shall admit as valid evidence records drawn up by the British authorities of the depositions of witnesses, or copies thereof, and records of conviction or other judicial documents or copies thereof: Provided that the said documents be signed or authenticated by an authority whose British evidence
to be received.

- Monaco. competence shall be certified by the seal of a Minister of State of Her Britannic Majesty.
- Evidence to justify committal for trial in extraditing State. XII.—The extradition shall not take place unless the evidence be found sufficient, according to the laws of the State applied to, either to justify the committal of the prisoner for trial, in case the crime had been committed in the territory of the said State, or to prove that the prisoner is the identical person convicted by the Courts of the State which makes the requisition, and that the crime of which he has been convicted is one in respect of which extradition could, at the time of such conviction, have been granted by the State applied to. In Her Britannic Majesty's dominions the fugitive criminal shall not be surrendered until the expiration of 15 days from the date of his committal to prison to await his surrender.
- Claims by several States. XIII.—If the individual claimed by one of the two High Contracting Parties in pursuance of the present Treaty should be also claimed by one or several other Powers on account of other crimes or offences committed upon their respective territories, his extradition shall be granted to the State whose demand is earliest in date.
- Delay for presenting evidence. XIV.—If sufficient evidence for the extradition be not produced within 2 months from the date of the apprehension of the fugitive, or within such further time as the State applied to or the proper tribunal thereof shall direct, he shall be set at liberty.
- Articles seized. XV.—All articles seized which were in the possession of the person to be surrendered, at the time of his apprehension, shall, if the competent authority of the State applied to for the extradition has ordered the delivery thereof, be given up when the extradition takes place, and the said delivery shall extend not merely to the stolen articles, but to everything that may serve as a proof of the crime.
- Expenses. XVI.—All expenses connected with extradition shall be borne by the demanding State.
- Transit through third State. XVII.—Either of the High Contracting Parties who may wish to have recourse for purposes of extradition to transit through the territory of a third Power shall be bound to arrange the condition of transit with such third Power.
- Each State to take evidence for the other. XVIII.—When in a criminal case of a non-political character either of the High Contracting Parties should think it necessary to take the evidence of witnesses residing in the dominion of the other, or to obtain any other legal evidence, a "Commission Rogatoire" to that effect shall be sent through the channel

indicated in Article VIII, and effect shall be given thereto conformably to the laws in force in the place where the evidence is to be taken.

Monaco.

XIX.—All documents which shall be reciprocally communicated in execution of the present Treaty shall be accompanied by a French or English translation (certified to be correct by the Consul who transmits the document in accordance with Article VIII), when they are not drawn up in the language of the country upon which the demand is made.

Translations.

The expense of such translations shall be borne by the demanding State.

XX.—The stipulations of the present Treaty shall be applicable to the Colonies and foreign possessions of Her Britannic Majesty so far as the laws for the time being in force in such Colonies and foreign possessions respectively will allow.

The requisition for the surrender of a fugitive criminal, who has taken refuge in any of such Colonies or foreign possessions, shall be made to the Governor or chief authority of such Colony or possession by any person authorised to act in such Colony or possession as a Consular Officer of the Principality of Monaco.

Extradition by
British Colonies.

Such requisition may be disposed of, subject always, as nearly as may be, and so far as the law of such Colony or foreign possession will allow, to the provisions of this Treaty, by the said Governor or chief authority, who, however, shall be at liberty either to grant the surrender or to refer the matter to his Government.

Her Britannic Majesty shall, however, be at liberty to make special arrangements in the British Colonies and foreign possessions for the surrender of criminals from Monaco who may take refuge within such Colonies and foreign possessions, on the basis, as nearly as may be, and so far as the law of such Colony or foreign possession will allow, of the provisions of the present Treaty.

Requisitions for the surrender of a fugitive criminal emanating from any Colony or foreign possession of Her Britannic Majesty shall be governed by the rules laid down in the preceding Articles of the present Treaty.

Extradition to
British Colonies.

XXI.—The present Treaty shall come into force 10 days after its publication in conformity with the forms prescribed by the laws of the High Contracting Parties. It may be terminated by either of the High Contracting Parties, at any time on giving to the other 6 months of its intention to do so.

Monaco.

The treaty shall be ratified, and the ratifications shall be exchanged at Paris as soon as possible.

NETHERLANDS.

[Treaty, 26th September, 1898. O. in C. 2nd February, 1899.

Acts in force from 14th March, 1899.]

Agreement to extradite.

I.—The High Contracting Parties engage to deliver up to each other those persons who, being accused or convicted of a crime committed in the territory of the one Party, shall be found within the territory of the other Party, under the circumstances and conditions stated in the present Treaty.

Extradition offences.

II.—The crimes or offences for which the extradition is to be granted are the following:—

1. Murder, including infanticide, or attempt, or conspiracy to murder, including such crimes when directed against the Sovereign, his heir, or any other person whomsoever, provided that the crime is not of a political character.

2. Manslaughter, including the manslaughter of a child.

3. Assault occasioning actual bodily harm.

4. Maliciously wounding or inflicting grievous bodily harm.

5. Counterfeiting or altering money, or uttering counterfeit or altered money.

1. Moord, daaronder begrepen kindermoord, of poging of samenspanning tot moord, daaronder begrepen zoodanige misdrijven gericht tegen den Souverein, tegen diens erfgenaam, of tegen eider ander persoon wien ook, mits het misdrijf geen staatkundig karakter draagt.

2. Doodslag, daaronder begrepen kinderdoodslag.

3. Mishandeling zwaar lichamelijk letsel ten gevolge hebbende.

4. Verwonding met voorbedachten rade of het toebrengen van zwaar lichamelijk letsel.

5. Het namaken of vervalschen van muntspecien en muntpapier of het in omloop brengen van valsche of vervalschte muntspeciën of muntpapier.

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| <p>6. Forgery, counterfeiting or altering, or uttering what is forged, counterfeited or altered.</p> <p>7. Embezzlement; fraud by a bailee, banker, agent, factor, trustee, or director or member or public officer of any company, made criminal by any law for the time being in force; or larceny.</p> <p>8. Malicious injury to property if the offence be indictable.</p> <p>9. Obtaining money, goods, or valuable securities by false pretences.</p> <p>10. Crimes against bankruptcy law.</p> <p>11. Perjury, subornation of perjury.</p> <p>12. Rape.</p> <p>13. Carnal knowledge or any attempt to have carnal knowledge of a girl under 16 years of age.</p> <p>14. Indecent assault.</p> <p>15. Administering drugs or using instruments with intent to procure the miscarriage of a woman.</p> <p>16. Abduction.</p> <p>17. Child-stealing.</p> <p>18. Kidnapping of minors and their false imprisonment.</p> <p>19. Burglary or house-breaking.</p> <p>20. Arson.</p> | <p>6. Valschheid in geschriften, of het gebruik maden van de valsche of vervalschte geschriften.</p> <p>7. Verduistering of diefstal.</p> <p>8. Opzettelijke en ernstige beschadiging van goederen.</p> <p>9. Oplichting.</p> <p>10. Bedriegelijke bandbreuk.</p> <p>11. Meineed of het uitlokken van meineed.</p> <p>12. Verachting.</p> <p>13. Het hebben van vleeschelijke gemeenschap met een meisje beneden den leeftijd van 16 jaar, of poging daartoe.</p> <p>14. Aanslag tegen de zeden.</p> <p>15. Het toedienen van middelen of het gebruiken van instrumenten met het doel de afdrijving der vrucht van eene vrouw te veroorzaken.</p> <p>16. Schaking.</p> <p>17. Wegvoering van kinderen.</p> <p>18. Oplichting van minderjarigen en hunne wederrechtelijke vrijheidsberoving.</p> <p>19. Inbraak.</p> <p>20. Opzettelijke brandstichting.</p> |
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Netherlands.

<u>Netherlands.</u>	<p>21. Robbery with violence.</p> <p>22. Any malicious act done with intent to endanger the safety of a railway train.</p> <p>23. Threats by letter or otherwise, with intent to extort.</p> <p>24. Piracy by [the] law of nations.</p> <p>25. Sinking or destroying a vessel at sea, or attempting to do so.</p> <p>26. Assaults on board a ship on the high seas, with intent to destroy life, or do grievous bodily harm.</p> <p>27. Revolt by two or more persons on board a ship on the high seas, against the authority of the master.</p> <p>28. Dealing in slaves in such a manner as to constitute a criminal offence against the laws of both States.</p>	<p>21. Diefstal met geweld.</p> <p>22. Het opzettelijk doen ontstaan van gevaar voor een spoortrein.</p> <p>23. Bedreiging bij geschfrite onder eene bepaalde voorwaardē (Artikel 285 tweede lid Nederlandsch Wetboek van Strafrecht).</p> <p>24. Zeeroof.</p> <p>25. Het doen zinken of vernielen van een vartuig op zee, of poging daartoe.</p> <p>26. Mishandelingen, met het oogmerk om te dooden of zwaar lichamelijk letsel toe to brengen, gepleegd aan boord van een vaartuig in volle zee.</p> <p>27. Verzet van twee of meer personen tegen het gezag van den schipper, gepleegd aan boord van een vaartuig in volle zee.</p> <p>28. Het drijven van slavenhandel mits opleverende een strafbaar feit volgens de wetten der beide Statens.</p>	
Accessories.	<p>Extradition is also to be granted for participation in any of the aforesaid crimes, provided such participation be punishable by the laws of the State applied to.</p>		
Offences to be extraditable by law of extraditing country.	<p>In the foregoing cases extradition shall take place only when the crime, if committed within the jurisdiction of the country on which the claim for surrender is made, would constitute an extradition crime by the laws of that country.</p>		
Other offences.	<p>Extradition may also be granted at the discretion of the State applied to in respect of any other crime for which, according to the laws of both the Contracting Parties for the time being in force the grant can be made.</p>		
Subjects.	<p>III.—Either Government may, in its absolute discretion, refuse to surrender its own subjects to the other Government.</p>		

IV.—The extradition shall not take place if the person claimed on the part of the British Government, or the person claimed on the part of the Netherland Government, has already been tried and discharged or punished, or is actually upon his trial, within the territory of the other of the two High Contracting Parties, for the crime for which his extradition is demanded.

Netherlands.

No extradition if person has been or is being tried.

If the person claimed on the part of the British Government, or if the person claimed on the part of the Netherland Government, should be under examination, or is undergoing sentence under a conviction for any other crime within the territories of the two High Contracting Parties respectively, his extradition shall be deferred until after he has been discharged, whether by acquittal, or on expiration of his sentence, or otherwise.

Trial for another offence pending, surrender postponed.

V.—The extradition shall not take place if, subsequently to the commission of the crime, or the institution of the penal prosecution, or the conviction thereon, exemption from prosecution or punishment has been acquired by lapse of time, according to the laws of the State applied to.

No extradition if offence prescribed.

VI.—A fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded is one of a political character, or if he prove that the requisition for his surrender has, in fact, been made with a view to try or punish him for an offence of a political character.

Political offences.

VII.—A person surrendered may in no case be kept in prison, or be brought to trial in the State to which the surrender has been made, for any other crime, or on account of any other matters, than those for which the extradition shall have taken place, until he has been restored, or had an opportunity during one month of returning, to the State by which he has been surrendered.

Trial after surrender to be limited to extradition offence.

This stipulation does not apply to crimes committed after the extradition.

VIII.—The requisition for extradition shall be made through the Diplomatic Agents of the High Contracting Parties respectively.

Requisitions.

The requisition for the extradition of an accused person must be accompanied by a warrant of arrest issued by the competent authority of the State requiring the extradition, and by such evidence as, according to the laws of the place where the accused is found, would justify his arrest if the crime had been committed there.

Arrest to be justified by law of extraditing State;

If the requisition relates to a person already convicted, it must be accompanied by the sentence of condemnation passed against the convicted person by the competent Court of the State that makes the requisition for extradition.

evidence of conviction.

<u>Netherlands.</u>	A sentence passed in <i>contumaciam</i> is not to be deemed a conviction, but a person so sentenced may be dealt with as an accused person.
Arrest.	IX.—If the requisition for extradition be in accordance with the foregoing stipulations, the competent authorities of the State applied to shall proceed to the arrest of the fugitive.
Procedure by warrant.	X.—Pending the presentation of the demand for extradition through the Diplomatic channel, a fugitive criminal may be apprehended under a warrant issued by any Police Magistrate, Justice of the Peace, or other competent authority in either country, on such information or complaint, and such evidence, or after such proceedings, as would, in the opinion of the authority issuing the warrant, justify the issue of a warrant if the crime had been committed or the person convicted in that part of the dominions of the two Contracting Parties in which the Magistrate, Justice of the Peace, or other competent authority exercises jurisdiction; provided, however, that in the United Kingdom the accused shall, in such case, be sent as speedily as possible before a Magistrate. He shall, in accordance with this Article, be discharged, as well in the Netherlands as in the United Kingdom, if within the term of 20 days a requisition for extradition shall not have been made by the Diplomatic Agent of the demanding country in accordance with the stipulations of this Treaty. The same rule shall apply to the cases of persons accused or convicted of any of the crimes or offences specified in this Treaty, and committed on the high seas on board any vessel of either country which may come into a port of the other.
Delay for presenting requisition.	
High sea offences.	
Procedure in British dominions.	XI.—If the fugitive have been arrested in the British dominions he shall forthwith be brought before a competent Magistrate, who is to examine him, and to conduct the preliminary investigation of the case, just as if the apprehension had taken place for a crime committed in the British dominions.
Evidence taken in Netherlands to be received.	In the examination which they have to make in accordance with the foregoing stipulations, the authorities of the British dominions shall admit as valid evidence depositions or statements on oath or the affirmations of witnesses taken in the Netherlands, or copies thereof, and likewise the warrants and sentences issued therein, and certificates of, or judicial documents stating the fact of, a conviction, provided the same are authenticated as follows:—
Authentication of documents.	1. A warrant must purport to be signed by a Judge, Magistrate, or officer of the Netherlands.

2. Depositions, or affirmations, or the copies thereof, must purport to be certified, under the hand of a Judge, Magistrate, or officer of the Netherlands, to be the original depositions or affirmations, or to be the true copies thereof, as the case may require. Netherlands.

3. A certificate of, or judicial document stating the fact of, a conviction must purport to be certified by a Judge, Magistrate, or officer of the Netherlands.

4. In every case such warrant, deposition, affirmation, copy, certificate, or judicial document must be authenticated either by the oath of some witness, or by being sealed with the official seal of the Minister of Justice, or some other Minister of the State of the Netherlands; but any other mode of authentication for the time being permitted by the law in that part of the British dominions where the examination is taken may be substituted for the foregoing.

XII.—If the fugitive have been arrested in the dominions of the Netherlands the officer of justice shall prefer a requisition within 3 days after the arrest, or, if the arrest have not taken place, or if it have taken place prior to the application for extradition, then within 3 days after the receipt of authority for that purpose from the Netherland Government in order that the person claimed may be interrogated by the Court, and that it may express its opinion as to the grant or refusal of extradition. Procedure in the
Netherlands.

Within 14 days after the interrogatory the Court shall forward its opinion and its decision, with the papers in the case, to the Minister of Justice.

The extradition shall only be granted on the production, either in original or in authenticated copy— Documents to be
produced.

1. Of a conviction; or,

2.—(a) Of a warrant of arrest (which, by the law of the British dominions, is the only document which is granted when it is adjudged upon evidence taken on oath that the accused ought to be taken into custody), issued in the form prescribed by British law, and indicating the offence in question sufficiently to enable the Netherland Government to decide whether it constitutes, in contemplation of Netherland law, a case provided for by the present Treaty; and

(b) Of the evidence.

In the examinations which they have to make in accordance with the foregoing stipulations, the authorities of the British evidence to be admitted.
Netherland dominions shall admit as valid evidence the sworn depositions

Netherlands. or statements on oath, or the affirmations of witnesses taken in the British dominions, or copies thereof, and likewise the warrants and sentences issued therein, and certificates of, or judicial documents stating the fact of, a conviction, provided the same are authenticated as follows:—

Authentication of documents.

1. A warrant must purport to be signed by a Judge, Magistrate, or officer of the British dominions.

2. Depositions or affirmations, or the copies thereof, must purport to be certified, under the hand of a Judge, Magistrate, or officer of the British dominions, to be the original depositions or affirmations or to be true copies thereof, as the case may require.

3. A certificate of, or judicial document stating the fact of, a conviction must purport to be certified by a Judge, Magistrate, or officer of the British dominions.

4. In every case such warrant, deposition, affirmation, copy, certificate, or judicial document must be authenticated, either by the oath of some witness, or by being sealed with the official seal of one of the principal Secretaries of State, or some other Minister of State of the British dominions, but any other mode of authentication for the time being permitted by the law in that part of the dominions of the Netherlands where the examination is taken may be substituted for the foregoing.

Extradition to be justified by law of extraditing State.

XIII.—The extradition shall not take place unless the evidence be found sufficient, according to the laws of the State applied to, either to justify the committal of the prisoner for trial, if the crime had been committed in the territory of the said State, or to prove that the prisoner is the identical person convicted by the Courts of the State which makes the requisition, and that the crime of which he has been convicted is one in respect of which extradition could, at the time of such conviction, have been granted by the State applied to. The fugitive criminal shall not be surrendered until the expiration of 15 days from the date of his being committed prison to await his surrender.

Claims by several States.

XIV.—If the individual claimed by one of the High Contracting Parties in pursuance of the present Treaty should be also claimed by one or several other Powers on account of other crimes or offences committed upon their respective territories, his extradition shall be granted to the State whose demand is earliest in date.

Articles seized.

XV.—All articles seized which were in the possession of the person to be surrendered at the time of his apprehension shall, if the competent authority of the State applied to for the extra-

dition has ordered the delivery thereof, be given up when the extradition takes place, and the said delivery shall extend not merely to the stolen articles, but to everything that may serve as a proof of the crime. Netherlands.

XVI.—The respective Governments mutually renounce all claim for the repayment of expenses incurred by them in the arrest and maintenance and transport of the person to be surrendered, and all other expenses which may be incurred within the limits of their respective territories until the person to be surrendered is placed on board ship, together with the expenses of giving up and returning all seized articles and of sending and returning the papers containing proof of the crime, or other documents, and they reciprocally agree to bear all such expenses themselves. Expense.

The above stipulations, however, shall not apply to extradition to and from Canada, as regards which Colony all the expenses shall be borne by the demanding State. Canada.

The person to be extradited shall be sent to the port which the Diplomatic or Consular Agent of the demanding State shall indicate.

XVII.—If in any criminal matter pending in any Court or tribunal of one of the two countries it is thought desirable to take the evidence of any witness in the other, such evidence may be taken by the judicial authorities in accordance with the laws in force on this subject in the country where the witness may be; and any expenses incurred in taking such evidence shall be defrayed by the country in which it is taken. Each country to take evidence for the other.

XVIII.—The stipulations of the present Treaty shall apply to the Colonies and foreign possessions of the two High Contracting Parties, but being based upon the legislation of the mother country, shall only be observed on either side so far as they may be compatible with the laws in force in those Colonies or possessions. Extradition to and from Colonies.

The demand for the extradition of an offender who has taken refuge in a Colony or foreign possession of either Contracting Party may also be made directly to the Governor or principal functionary of that Colony or possession by the Governor or principal functionary of a Colony or possession of the other Contracting Party when the two Colonies or foreign possessions are situated in Asia, Australia (including New Zealand and Tasmania), the Pacific and Indian Oceans, or South or East Africa.

Netherlands. The same rule shall be followed if the two Colonies or foreign possessions are situated in America (including the West India Islands).

The said Governors or principal functionaries shall have the power either of granting the extradition or of referring the question to their Government.

In all other cases, the demand for extradition shall be made through the Diplomatic channel.

The period of provisional arrest provided for in Article X shall for the purposes of this Article be extended to 60 days.

Repeal.

XIX.—From the day when the present Treaty shall come into force the Treaty of Extradition between the two countries of the 19th June, 1874, shall cease to have effect; but the present Treaty shall apply to all crimes within the Treaty, whether committed before or after the day when it comes into force.

XX.—The present Treaty shall be ratified, and the ratifications shall be exchanged as soon as possible.

The Treaty shall come into force 3 months after the exchange of the ratifications. It may be terminated by either of the High Contracting Parties at any time on giving to the other 6 months' notice of its intention to do so.

NICARAGUA.

[Treaty, 19th April, 1905. O. in C. 11th May, 1906.]

Acts in force from 25th May, 1906.]

Agreement to extradite.

I.—The High Contracting Parties engage to deliver up, reciprocally, those persons who, being accused or convicted of having committed crime in the territory of the one Party, shall be found within the territory of the other, under the circumstances and conditions that are laid down in the present Treaty.

Extradition offences.

II.—Extradition shall be reciprocally granted for the following crimes and offences:—

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| 1. Murder, or attempt or conspiracy to murder. | 1. Asesinato, tentativa ó conato de asesinato. |
| 2. Manslaughter | 2. Homicidio. |
| 3. Administering drugs or using instruments with intent to procure the miscarriage of women. | 3. Empleo de drogas ó instrumentos con objecto de procurar el aborto. |
| 4. Rape. | 4. Violación. |

5. Carnal knowledge, or any attempt to have carnal knowledge of a girl under the age of puberty, according to the laws of the respective countries.

6. Indecent assault.

7. Kidnapping and false imprisonment.

8. Abandoning, exposing, or detaining children.

9. Abduction.

10. Bigamy.

11. Maliciously wounding or inflicting grievous bodily harm.

12. Assault occasioning actual bodily harm.

13. Threats, by letter or otherwise, with intent to extort money or other things of value.

14. Perjury, or subornation of perjury.

15. Arson.

16. Burglary or house-breaking, robbery with violence, larceny, or embezzlement.

17. Fraud by a bailee, banker, agent, factor, trustee, director, member, or public officer of any company.

18. Obtaining money, valuable security, or goods by false pretences; receiving any money, valuable security, or other property, knowing the same to have been stolen or unlawfully obtained.

19.—(a) Counterfeiting or altering money, or bringing into circulation counterfeited or altered money.

5. Estupro, Conocimiento carnal ó tentativa del mismo, con una impuber, conforme á las leyes del país respectivo. Nicaragua.

6. Actos deshonestos.

7. Secuestro y prisión arbitraria.

8. Abandono ó exposición de niños.

9. Plagio.

10. Bigamia.

11. Lesiones corporales graves.

12. Asalto de que resulte daño corporal.

13. Amenazas, sea por escrito ó de otro modo con el objeto de obtener dinero ú otros objetos de valor.

14. Falso testimonio ó inducción para cometerlo.

15. Incendio.

16. Escalamiento ó fractura de casas, robo con violencia, ratería ó hurto.

17. Fraude cometido por fiador ó banquero, agente, factor, comisario, miembro, director ó empleado público de alguna compañía.

18. Obtener dinero, títulos de valor ú objetos fraudulentamente, recibir dinero, títulos de valor ú otros efectos á sabiendas de que han sido robados ó habidos ilícitamente.

19.—(a) Falsificación ó alteración de moneda, ó poner en circulación moneda falsificada ó alterada.

<u>Nicaragua.</u>	<p>(b) Knowingly making without lawful authority any instrument, tool, or engine adapted or intended for the counterfeiting of the coin of the realm.</p> <p>20. Forgery, or uttering what is forged.</p> <p>21. Crimes against bankruptcy law.</p> <p>22. Any malicious act done with intent to endanger the safety of any persons travelling or being upon a railway.</p> <p>23. Malicious injury to property, if such offence be indictable.</p> <p>24. Piracy and other crimes or offences committed at sea against persons or things, which, according to the laws of the High Contracting Parties, are extradition offences.</p> <p>25. Dealing in slaves in such a manner as to constitute a criminal offence against the laws of both States.</p>	<p>(b) Hacer sin autoridad legal y á sabiendas, instrumentos, utensilios ó maquinaria destinada para la falsificación de la moneda del Estado.</p> <p>20. Falsificación ó hacer circular lo falsificado.</p> <p>21. Delito contra la ley de bancarota.</p> <p>22. Todo acto ejecutado con intento criminal y que tenga por objeto poner en peligro la seguridad de las personas en los ferrocarriles.</p> <p>23. Daño á la propiedad ejecutado con intento criminal, si constituyere delito.</p> <p>24. Piratería ú otros delitos cometidos en el mar, contra las personas ó cosas, que estén sujetos á extradición según las leyes de las Altas Partes Contratantes.</p> <p>25. Comercio de esclavos ejecutado de manera que constituya hecho criminal, según las leyes de los Estados Contratantes.</p>
Accessories.	<p>Extradition shall also be granted for participation in any of the aforesaid crimes, provided such participation be punishable by the laws of both Contracting Parties.</p>	
Other offences.	<p>Extradition may also be granted at the discretion of the State applied to in respect of any other crime for which, according to the laws of both the Contracting Parties for the time being in force, the grant can be made.</p>	
Extradition to be justified by law of extraditing State.	<p>Provided that the surrender shall be made only when, in the case of a person accused, the commission of the crime shall be so established as that the laws of the country where the fugitive or person so accused shall be found would justify his apprehension and commitment for trial if the crime had been there committed; and, in the case of a person alleged to have been convicted, on</p>	

such evidence as, according to the laws of the country where he is found, would prove that he had been convicted. Nicaragua.

Extradition shall not be granted if, according to the laws of either country, the maximum punishment for the offence charged is imprisonment for less than one year. Degree of extraditable offence.

III.—No Nicaraguan shall be delivered up by the Government of Nicaragua to the Government of the United Kingdom, and no subject of the United Kingdom shall be delivered up by the Government thereof to the Government of Nicaragua. Subjects.

IV.—The extradition shall not take place if the person claimed on the part of the Government of the United Kingdom, or the person claimed on the part of the Government of Nicaragua, has already been tried and discharged or punished, or is still under trial in the territory of Nicaragua or in the United Kingdom respectively for the crime for which his extradition is demanded. No extradition if person has been or is being tried.

If the person claimed on the part of the Government of the United Kingdom, or if the person claimed on the part of the Government of Nicaragua, should be under examination for any crime in the territory of Nicaragua or in the United Kingdom respectively, his extradition shall be deferred until the conclusion of the trial and the full execution of any punishment awarded to him. Trial for another offence pending, surrender postponed.

V.—The extradition shall not take place if, subsequently to the commission of the crime, or the institution of the penal prosecution or the conviction thereon, exemption from prosecution or punishment has been acquired by lapse of time, according to the laws of the State applied to. No extradition if offence prescribed.

VI.—A fugitive shall not be surrendered if the offence in respect of which his surrender is demanded is one of a political character, or if he prove that the requisition for his surrender has in fact been made with a view to try or punish him for an offence of a political character. Political offences.

VII.—A person surrendered can in no case be kept in prison or be brought to trial in the State to which the surrender has been made, for any other crime, or on account of any other matters than those for which the extradition shall have taken place. This stipulation does not apply to crimes committed after the extradition. Trial after surrender to be limited to extradition offence.

VIII.—The requisition for extradition shall be made through the Diplomatic Agents, or duly recognised Consuls-General of the High Contracting Parties respectively. Requisitions.

- Nicaragua. The requisition for the extradition of an accused person must be accompanied by a warrant of arrest issued by the competent authority of the State requiring the extradition, and by such evidence as, according to the laws of the place where the accused is found, would justify his arrest if the crime had been committed there.
- Arrest on warrant, if justified by law of extraditing State;
evidence of conviction.
- If the requisition relates to a person already convicted, it must be accompanied by the sentence of condemnation passed against the convicted person by the competent Court of the State that makes the requisition for extradition.
- A sentence passed *in contumaciam* is not to be deemed a conviction, but a person so sentenced may be dealt with as an accused person.
- Arrest.
- IX.—If the requisition for extradition be in accordance with the foregoing stipulations, the competent authorities of the State applied to shall proceed to the arrest of the fugitive.
- The prisoner is then to be brought before a competent magistrate, who is to examine him and to conduct the preliminary investigation of the case, just as if the apprehension had taken place for a crime committed in the same country.
- Evidence to justify committal for trial in extraditing State.
- X.—The extradition shall not take place before the expiration of 15 days from the apprehension, and then only if the evidence be found sufficient, according to the laws of the State applied to, either to justify the committal of the prisoner for trial, in case the crime had been committed in the territory of the said State, or to prove that the prisoner is the identical person convicted by the Courts of the State which makes the requisition.
- Evidence taken in claiming State to be admitted.
- XI.—In the examinations which they have to make in accordance with the foregoing stipulations, the authorities of the State applied to shall admit as entirely valid evidence the sworn depositions or statements of witnesses taken in the other State, or copies thereof, and likewise the warrants and sentences issued therein, provided such documents are signed or certified by a Judge, Magistrate, or officer of such State, and are authenticated by the oath of some witness, or by being sealed with the official seal of the Minister of Justice or some other Minister of State.
- Delay for presenting evidence.
- XII.—If sufficient evidence for the extradition be not produced within 2 months from the date of the apprehension of the fugitive, he shall be set at liberty.
- Articles seized.
- XIII.—All articles seized, which were in the possession of the person to be surrendered at the time of his apprehension, shall,

if the competent authority of the State applied to for the extradition has ordered the delivery thereof, be given up when the extradition takes place; and the said delivery shall extend, not merely to the stolen articles, but to everything that may serve as a proof of the crime. Nicaragua.

XIV.—The High Contracting Parties renounce any claim for the reimbursement of the expenses incurred by them in the and maintenance of the person to be surrendered and his conveyance till placed on board ship; they reciprocally agree to bear such expenses themselves. Expenses.

XV.—The stipulations of the present Treaty shall be applicable to the Colonies and foreign possessions of His Britannic Majesty. The requisition for the surrender of a fugitive criminal who has taken refuge in any of such Colonies or foreign possessions, shall be made to the Governor or chief authority of such Colony or possession by the chief Consular Officer of Nicaragua in such Colony or possession. Extradition by
British Colonies.

Such requisition may be disposed of (subject always, as nearly as may be, to the provisions of this Treaty) by the said Governor or chief authority, who, however, shall be at liberty either to grant the surrender or to refer the matter to his Government.

His Britannic Majesty shall, however, be at liberty to make special arrangements in the British Colonies and foreign possessions for the surrender of Nicaraguan criminals who may take refuge within such Colonies and foreign possessions on the basis, as nearly as may be, of the provisions of the present Treaty.

The requisition for the surrender of a fugitive criminal from any Colony or foreign possession of His Britannic Majesty shall be governed by the rules laid down in the preceding Articles of the present Treaty. Extradition to
British Colonies.

XVI.—The present Treaty shall come into force 10 days after its publication, in conformity with the forms prescribed by the laws of the High Contracting Parties. It may be terminated by either of the High Contracting Parties, by a notice not exceeding one year and not less than 6 months.

It shall be ratified, and the ratifications shall be exchanged in London within the period of 6 months from the date of signature.

Norway.

NORWAY.

[Treaty, with Sweden and Norway, 26th June, 1873.

O. in C. 30th September, 1873.

Acts in force from 17th October, 1873.

Agreement, with Norway, 18th February, 1907. O. in C. 6th July, 1907.]

THE British and Norwegian Governments, who agree that the Treaty signed at Stockholm on the 26th June, 1873, between the United Kingdom of Great Britain and Ireland and the Kingdoms of Sweden and Norway, for the mutual surrender of fugitive criminals shall remain in force between the United Kingdom of Great Britain and Ireland and the Kingdom of Norway in so far as its provisions apply to the Kingdom of Norway alone, and who deem it desirable to make certain additions to the said Treaty, have authorised the Undersigned to declare that the following additions should be made to the offences set out in Article II of the said Treaty for which, under the circumstances and conditions stated in the said Treaty extradition is to be granted:—

Treaty with
Sweden and
Norway
continued as
to Norway.
[*cf. post,*
SWEDEN].

Additional
extradition
offences.

19. Perjury and subornation of perjury.

20. Receiving any money, valuable security, or other property, knowing the same to have been stolen or embezzled.

21. Malicious wounding or inflicting grievous bodily harm.

22. Unlawful carnal knowledge, or any attempt or have unlawful carnal knowledge, of a girl under the age of 16 years.

Any offence which, by the laws of both countries, is for the time being an extradition offence.

19. Mened of forledelse til mened.

20. Modtagelse af penge, værdipepirer eller formuesgjenstande med kjendskab til, at de er stjaalne eller underslaaet.

21. Forscetlig tilfóielse af saar eller betydelig legemlig skade.

22. Samleie eller forsóg paa at opnaa samleie med kvinde under 16 aar.

PANAMÁ.

[Treaty, 25th August, 1906. O. in C. 12th August, 1907.
Acts in force from 26th August, 1907.

I.—The High Contracting Parties engage to deliver up to each other, under the circumstances and conditions stated in the present Treaty, those persons who, being accused or convicted of any of the crimes or offences enumerated in Article II., committed in the territory of the one Party, shall be found within the territory of the other Party.

II.—Extradition shall be reciprocally granted for the following crimes or offences:—

- | | |
|--|--|
| 1. Murder, or attempt or conspiracy to murder. | 1. Asesinato, tentativa de asesinato, ó conjuración para cometerlo. |
| 2. Manslaughter. | 2. Homicidio. |
| 3. Administering drugs or using instruments with intent to procure the miscarriage of women. | 3. Administración de drogas ó uso de instrumentos con el objeto de producir aborto. |
| 4. Rape. | 4. Fuerza y violencia. |
| 5. Carnal knowledge, or any attempt to have unlawful carnal knowledge of a girl under the age of 16 years, so far as such acts are punishable by the law of the State upon which the demand is made. | 5. Abuso deshonesto ó tentativa de cometerlo con mujer menor de 16 años, siempre que tales actos sean de los que castiga la ley del país donde se cometan. |
| 6. Indecent assault. | 6. Atentado contra el pudor. |
| 7. Kidnapping and false imprisonment, child-stealing. | 7. Sustracción de personas y encarcelamiento ilegal de las mismas, robo de criaturas. |
| 8. Abandoning, exposing, or detaining children. | 8. Abandono, exposición, ú ocultamiento de criaturas. |
| 9. Abduction. | 9. Rapto. |
| 10. Bigamy. | 10. Bigamia. |
| 11. Maliciously wounding or inflicting grievous bodily harm. | 11. Heridas. |
| 12. Assault occasioning actual bodily harm. | 12. Maltratamiento de obra. |

Panamá.

13. Threats, by letter or otherwise, with intent to extort money or other things of value.

14. Perjury or subornation of perjury.

15. Arson, or attempt to commit arson.

16. Burglary or house-breaking, robbery with violence, larceny, or embezzlement.

17. Fraud by a bailee, banker, agent, factor, trustee, director, member, or public officer of any company.

18. Obtaining money, valuable security, or goods by false pretences; receiving any money, valuable security, or other property, knowing the same to have been stolen or unlawfully obtained.

19.—(a) Counterfeiting or altering money, or bringing into circulation counterfeited or altered money.

(b) Knowingly making without lawful authority any instrument, tool, or engine adapted and intended for the counterfeiting of the coin of the realm.

20. Forgery, or knowingly uttering what is forged.

21. Crimes against bankruptcy law.

13. Amenazas por carta ó de cualquier otro modo con el propósito de obtener dinero ú objetos de valor.

14. Perjurio ó instigación para que sea cometido.

15. Incendio, ó tentativa de incendio.

16. Robo con escalamiento y fractura; robo con fuerza y violencia y malversación de fondos públicos ó privados por empleados públicos ó individuos particulares. Hurto.

17. Abuso de confianza, entendiéndose por tal el fraude cometido por un depositario, banquero, agente, factor, fideicomisario, director, miembro ó empleado de alguna Sociedad.

18. Estafa y engaño, entendiéndose por tal obtener dinero, valores ú objetos con fin doloso; recibir dinero, valores ó bienes de cualquier clase á sabiendas de que sean robados ó adquiridos ilegalmente.

19.—(a) Falsificación ó alteración de la moneda ó hacer circular la moneda falsificada ó alterada.

(b) Construir á sabiendas, y sin autorización legal, instrumentos ó maquinarias que sirvan y se destinen á falsificar la moneda del Estado.

20. Falsificar ó poner en circulación documentos falsificados, á sabiendas.

21. Quiebra fraudulenta.

Panamá.

22. Any malicious act done with intent to endanger the safety of any persons travelling or being upon a railway.

22. Cualquier acto contra un ferrocarril con el propósito de atentar contra la vida de las personas que viajen en los trenes ó se encuentren en ellos.

23. Malicious injury to property, if such offence be indictable.

23. Daños contra la propiedad (siempre que den lugar á enjuiciamiento).

24. Piracy and other crimes or offences committed at sea against persons or things which, according to the laws of the High Contracting Parties, are extradition offences.

24. Piratería y otros crímenes y delitos cometidos en el mar, contra personas y propiedades (y que, según las leyes de las Altas Partes Contratantes, den lugar á la extradición).

25. Dealing in slaves in such manner as to constitute a criminal offence against the laws of both States.

25. Tráfico de esclavos en forma que constituya un delito contra las leyes de ambos Estados.

III.—Neither Party is obliged to surrender its own subjects or citizens to the other Party.

IV.—Extradition shall not take place if the person claimed on the part of His Britannic Majesty's Government, or of the Government of Panamá has already been tried and discharged, or punished, or is waiting trial in the territory of the United Kingdom or in the Republic of Panamá respectively, for the crime for which his extradition is demanded.

No extradition if person has been or is being tried.

If the person claimed on the part of His Britannic Majesty's Government, or of the Government of Panamá, should be awaiting trial or undergoing sentence for any other crime in the territory of the United Kingdom or in the Republic of Panamá respectively, his extradition shall be deferred until after he has been discharged, whether by acquittal or on expiration of sentence, or otherwise.

Trial for another offence pending, surrender postponed.

V.—Extradition shall not be granted if exemption from prosecution or punishment has been acquired by lapse of time, according to the laws of the State applying or applied to.

No extradition if offence prescribed.

Neither shall it be granted, if, according to the law of either country, the maximum punishment for the offence charged is imprisonment for less than one year.

Degree of extraditable offence.

§ The usual sequence has become inverted; the sentence should read "in the territory of Panamá or in the United Kingdom respectively": *cf. e.g. Mexico, art. IV. p. 144.*

<p><u>Panamá.</u></p> <p>Political offences.</p>	<p>VI.—A fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded is one of a political character, or if he proves that the requisition for his surrender has, in fact, been made with a view to try or punish him for an offence of a political character.</p>
<p>Trial after surrender to be limited to extradition offence.</p>	<p>VII.—A person surrendered shall in no case be kept in prison or be brought to trial in the State to which the surrender has been made for any other crime, or on account of any other matters, than those for which the extradition shall have taken place, until he has been restored, or has had an opportunity of returning to the State by which he has been surrendered.</p> <p>This stipulation does not apply to crimes committed after the extradition.</p>
<p>Requisitions.</p>	<p>VIII.—The requisition for extradition shall be made through the Diplomatic Agents or Consuls-General of the High Contracting Parties respectively.</p>
<p>Arrest to be justified by law of extraditing State;</p>	<p>The requisition for the extradition of an accused person must be accompanied by a warrant of arrest issued by the competent authority of the State requiring the extradition, and by such evidence as, according to the laws of the place where the accused is found, would justify his arrest if the crime had been committed there.</p>
<p>evidence of conviction.</p>	<p>If the requisition relates to a person already convicted, it must be accompanied by a copy of the judgment passed on the convicted person by the competent Court of the State that makes the requisition for extradition.</p> <p>A sentence passed <i>in contumaciam</i> is not to be deemed a conviction, but a person so sentenced may be dealt with as an accused person.</p>
<p>Arrest.</p>	<p>IX.—If the requisition for extradition be in accordance with the foregoing stipulations, the competent authorities of the State applied to shall proceed to the arrest of the fugitive.</p>
<p>Procedure by warrant.</p>	<p>X.—A criminal fugitive may be apprehended under a warrant issued by any competent authority in either country, on such information or complaint, and such evidence, or after such proceedings, as would, in the opinion of the authority issuing the warrant, justify the issue of a warrant if the crime had been committed, or the person convicted in that part of the dominions of the two Contracting Parties in which the said authority exercises jurisdiction; provided, however, that in the United Kingdom the accused shall, in such case, be sent as speedily as possible before a competent Magistrate.</p>

He shall, in accordance with this Article, be discharged, as Panamá. well in the Republic of Panamá as in the United Kingdom, if within the term of 60 days a requisition for extradition shall not have been made by the Diplomatic Agent or Consul-General of his country, in accordance with the stipulations of this Treaty. Delay for presenting requisition. The same rule shall apply to the cases of persons accused or convicted of any of the crimes or offences specified in this Treaty, and committed in the high seas on board any vessel of either country which may come into a port of the other. High sea offences.

XI.—The extradition shall take place only if the evidence be found sufficient according to the laws of the State applied to, either to justify the committal of the prisoner for trial, in case the crime had been committed in the territory of the same State, or if extradition is claimed in respect of an offence of which the fugitive has been already convicted, to prove that the prisoner is the person convicted, and that the crime of which he has been convicted is one in respect of which extradition could, at the time of such conviction, have been granted by the State applied to. Evidence to justify committal for trial in extraditing State.

XII.—The extradition of fugitives under the provisions of this Treaty shall be carried out in His Britannic Majesty's dominions and in the Republic of Panamá, respectively, in conformity with the laws regulating extradition for the time being in force in the surrendering State.

XIII.—In the examination which they have to make in accordance with the foregoing stipulations, the authorities of the State applied to shall admit as valid evidence the sworn depositions or the affirmations of witnesses taken in the other State, or copies thereof, and likewise the warrants and sentences issued therein, and certificates of, or judicial documents stating, the fact of a conviction, provided the same are authenticated as follows:— Evidence taken in claiming State to be admitted.

1. A warrant must purport to be signed by a Judge, Magistrate, or officer of the other State. Authentication of documents.

2. Depositions or affirmations, or the copies thereof, must purport to be certified under the hand of a Judge, Magistrate, or officer of the other State, to be the original depositions or affirmations, or to be true copies thereof, as the case may require.

3. A certificate of, or judicial document stating the fact of a conviction, must purport to be certified by a Judge, Magistrate, or officer of the other State.

4. In every case such warrant, deposition, affirmation, copy, certificate, or judicial document must be authenticated either by

- Panamá.** the oath of some witness, or by being sealed with the official seal of the Minister of Justice, or some other Minister of the other State; but any other mode of authentication for the time being permitted by law of the country where the examination is taken may be substituted for the foregoing.
- Claims by several States.** XIV.—If the individual claimed by one of the High Contracting Parties, in pursuance of the present Treaty, should be also claimed by one or several other Powers, on account of other crimes or offences committed upon their respective territories, his extradition shall be granted to that State whose demand is earliest in date.
- Delay for presenting evidence.** XV.—If sufficient evidence for the extradition be not produced within 90 days from the date of the apprehension of the fugitive, or within such further time as the State applied to, or the proper tribunal thereof, shall direct, the fugitive shall be set at liberty.
- Articles seized.** XVI.—All articles seized which were in the possession of the person to be surrendered at the time of his apprehension shall, if the competent authority of the State applied to for the extradition has ordered the delivery of such articles, be given up when the extradition takes place; and the said delivery shall extend not merely to the stolen articles, but to everything that may serve as a proof of the crime.
- Expenses.** XVII.—All expenses connected with extradition shall be borne by the demanding State.
- XVIII.—The stipulations of the present Treaty shall be applicable to the Colonies and foreign possessions of His Britannic Majesty, so far as the laws in such Colonies and foreign possessions respectively will allow.
- Extradition from British Colonies.** The requisition for the surrender of a fugitive criminal, who has taken refuge in any of such Colonies or foreign possessions, shall be made to the Governor or chief authority of such Colony or possession by the chief Consular Officer of the Republic of Panamá in such Colony or possession.
- Such requisition may be disposed of, subject always, as nearly as may be, and so far as the law of such Colony or foreign possession will allow, to the provisions of this Treaty, by the said Governor or chief authority, who, however, shall be at liberty either to grant the surrender or to refer the matter to his Government.
- His Britannic Majesty shall, however, be at liberty to make special arrangements in the British Colonies and foreign posses-

sions for the surrender of criminals from the Republic of Panamá who may take refuge within such Colonies and foreign possessions, on the basis, so far as the law of such Colony or foreign possession will allow, of the provisions of the present Treaty.

Panamá.

Requisitions for the surrender of a fugitive criminal emanating from any Colony or foreign possession of His Britannic Majesty shall be governed by [the] rules laid down in the preceding Articles of the present Treaty.

Extradition to
British Colonies

XIX.—The present Treaty shall come into force 10 days after its publication, in conformity with the forms prescribed by the laws of the High Contracting Parties. It may be terminated by either of the High Contracting Parties by a notice not exceeding one year, and not less than 6 months.

It shall be ratified, and the ratifications shall be exchanged at Panamá as soon as possible.

PERU.

[Treaty, 26th January, 1904. O. in C. 7th May, 1907.
Acts in force from 20th May, 1907.]

I.—The High Contracting Parties engage to deliver up to each other, in accordance with the stipulations of the present Treaty, any persons who, being accused or convicted in one of the two countries of one or more of the offences enumerated in the following Article are found within the territory of the other.

Agreement to
extradite.

II.—Extradition shall be reciprocally granted for the following crimes or offences:—

Extradition
offences.

1. Murder (including parricide, infanticide, poisoning) or attempt or conspiracy to murder. The Peruvian Government may, however, in its absolute discretion, refuse to deliver up any person charged with a crime punishable with death.

1. Homicidio (comprendiendo en esto parricidio, infanticidio y envenenamiento), homicidio frustrado ó complicitad para realizarlo. Será, sin embargo, potestativo del Gobierno Peruano rehusar la entrega de un individuo acusado de crimen que merezca pena de muerte.

Crimes
punishable
with death.

2. Manslaughter.

2. Homicidio casual, siempre que haya alguna culpa.

3. Procuring or attempting to procure abortion.

3. Aborto consumado ó frustrado.

Peru.

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| <p>4. Rape, abduction and indecent assault.</p> <p>5. Unlawfully detaining or kidnapping children, abandoning or exposing them.</p> <p>6. Bigamy.</p> <p>7. Wounding or inflicting grievous bodily harm.</p> <p>8. Assault occasioning actual bodily harm.</p> <p>9. Threats, by letter or otherwise, with intent to extort money or other things of value.</p> <p>10. Perjury or subornation or perjury.</p> <p>11. Arson and other malicious injury to property if such injuries are indictable.</p> <p>12. Burglary or house-breaking, robbery with violence, larceny or embezzlement.</p> <p>13. Fraud by a bailee, banker, agent, factor, trustee, director, member or public officer of any company, punishable with imprisonment for not less than 1 year.</p> <p>14. Obtaining money, valuable security, or goods by false pretences; receiving any money, valuable security or other property, knowing the same to have been stolen or unlawfully obtained.</p> <p>15. Counterfeiting or altering money or bringing into circulation counterfeited or altered money.</p> | <p>4. Estupro, rapto y violación y demás atentados contra el pudor.</p> <p>5. Ocultamiento ó robo de criaturas, abandonarlas ó exponerlas.</p> <p>6. Bigamia.</p> <p>7. Herida ó daño corporal grave.</p> <p>8. Asalto que produzca daño corporal.</p> <p>9. Amenazas por carta ó de otro modo con el propósito de obtener dinero ú objetos de valor.</p> <p>10. Perjurio ó soborno para cometerlo.</p> <p>11. Incendio ú otros daños perpetrados contra la propiedad, siempre que sean procesables.</p> <p>12. Violación de domicilio con fractura de puertas ó cerraduras para robar; robo hurto y peculado.</p> <p>13. Fraude cometido por un depositario, banquero, agente, factor, fideicomisario, director, miembro ó empleado de alguna sociedad, siempre que el actor merezca ser penado cuando menos con un año de prisión.</p> <p>14. Estafa y en general recibir dinero, valores ú otros bienes á sabiendas de que son robados ó adquiridos de una manera ilegal.</p> <p>15. Falsificar ó alterar la moneda ó hacer circular la falsificada ó alterada.</p> |
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Peru.

16. Making or having possession of instruments adapted and intended for the counterfeiting of the coin of the realm or for the forgery of documents. Forgery and uttering what is forged.

16. Hacer ó poseer instrumentos con el propósito de falsificar la moneda del Estado ó documentos públicos. Falsificación y hacer circular lo falsificado.

17. Offences against bankruptcy law.

17. Quiebra fraudulenta.

18. Any malicious act done with intent to endanger the safety of any persons travelling or being upon a railway.

18. Cualquier acto contra un ferrocarril con el propósito de comprometer la vida de las personas que viajen en los trenes ó se encuentren en él.

19. Piracy by the law of nations.

19. Piratería según el derecho internacional.

20. Dealing in slaves in such manner as to constitute a criminal offence against the laws of both States.

20. Tráfico de esclavos, en forma que constituya un delito contra las leyes de ambos países.

III.—Each of the High Contracting Parties reserves the right to grant or refuse the surrender of its own subjects or citizens.

Subjects.

IV.—The surrender shall not take place when the person claimed by the Government of the two nations has already been tried and sentenced by the authorities of the other for the crime for which his extradition is demanded.

No extradition if person has been or is being tried.

If the person claimed should be awaiting trial in the territory of one of the two nations, or be undergoing sentence in it on account of any other crime than that for which his extradition is claimed, his surrender shall be deferred until after he has been discharged, whether by acquittal or on expiration of his sentence, or by pardon or otherwise.

Trial for another offence pending, surrender postponed.

V.—The extradition shall not take place if, subsequently to the commission of the crime, or the institution of the penal prosecution or the conviction thereon, exemption from prosecution or punishment has been acquired by lapse of time, according to the laws of the State applying or applied to.

No extradition if offence prescribed.

VI.—A fugitive shall not be surrendered if the offence in respect of which his surrender is demanded is one of a political character, or if he prove that the requisition for his surrender has, in fact, been made with a view to try or punish him for an offence of a political character.

Political offences.

- Peru.** VII.—A person surrendered may in no case be kept in prison or be brought to trial in the State to which the surrender has been made, for any other crime, or on account of any other matters than those for which the extradition shall have taken place, until he has had an opportunity of returning to the State by which he has been surrendered.
- Trial after extradition to be limited to extradition offence.
- This stipulation does not apply to crimes committed after the extradition.
- Requisitions.** VIII.—The requisition for extradition shall be made through the Diplomatic Agents of the High Contracting Parties respectively; in the default of these by the Consular Officers, and in the absence of both of these, directly, from Government to Government.
- Arrest to be justified by law of extraditing State;
- The requisition for the extradition of an accused person must be accompanied by a warrant of arrest issued by the competent authority of the State requiring the extradition, and by such evidence as, according to the laws of the place where the accused is found, would justify his arrest if the crime had been committed there.
- Also, in case of extradition being demanded by Great Britain for a crime which is an offence against some statute, a copy of the said statute shall be sent; and if for a crime at common law only, an extract from some text-book generally recognised as authoritative may be sent, as indicating the punishment applicable to the offence giving rise to the requisition.
- evidence of conviction.
- If the requisition relates to a person already convicted, it must be accompanied by the sentence of condemnation passed against the convicted person by the competent Court of the State that makes the requisition for extradition.
- A sentence passed *in contumaciam* is not to be deemed a conviction, but a person so sentenced may be dealt with as an accused person.
- Arrest.** IX.—If the requisition for extradition be in accordance with the foregoing stipulations, the competent authorities of the State applied to shall proceed to the arrest of the fugitive.
- Procedure by warrant.
- X.—When either of the contracting Governments considers the case urgent it may apply for the provisional arrest of the criminal and the safe keeping of any objects relating to the offence.
- Such request will be granted, provided the existence of a sentence or warrant of arrest is proved and the nature of the offence of which the fugitive is accused is clearly stated.

The warrant of arrest to which this Article refers should be issued by the competent judicial authorities of the country applying for extradition. In the United Kingdom the accused shall on arrest be sent as speedily as possible before a Police Magistrate. The prisoner shall be discharged if the State applying does not complete the requisition within the term of 90 days counting from the date of the arrest of the prisoner.

Peru.

Delay for
presenting
requisition.

XI.—The extradition shall take place only if the evidence be found sufficient according to the laws of the State applied to, either to justify the committal of the prisoner for trial, in case the crime had been committed in the territory of the same State, or to prove by the documents presented which shall contain a description of the person claimed and any particulars which shall serve to identify him, that the prisoner is the identical person convicted by the Courts of the State which makes the requisition and that the crime of which he has been convicted is one in respect of which extradition could, at the time of such conviction have been granted by the State applied to; and no criminal shall be surrendered until after the expiration of 15 days from the date of his committal to prison to await the warrant for his surrender.

Evidence to
justify committal
for trial in
extraditing State.

XII.—In the examinations which they may have to make in accordance with the foregoing stipulations, the authorities of the State applied to shall admit as valid evidence the sworn depositions or the affirmations of witnesses taken in the other State, or copies thereof, and likewise the warrants and sentences issued therein, and certificates of, or judicial documents stating the fact of a conviction, provided the same are authenticated as follows:—

Evidence taken
in claiming State
to be admitted.

1. A warrant must purport to be signed by a Judge, Magistrate, or officer of the other State.

Authentication
of documents.

2. Depositions or affirmations, or the copies thereof, must purport to be certified under the hand of a Judge, Magistrate, or officer of the other State to be the original depositions or affirmations, or to be true copies thereof, as the case may require.

3. A certificate of or judicial document stating the fact of a conviction, must purport to be certified by a Judge, Magistrate, or officer of the other State.

4. In every case such warrant, deposition, affirmation, copy, certificate, or judicial document must be authenticated either by the oath of some witness, or by being sealed with the official seal of the Minister of Justice, or some other Minister of the

- Peru. other State; but any other mode of authentication for the time being permitted by law of the country where the examination is taken may be substituted for the foregoing.
- Claims by several States. XIII.—If the individual claimed by one of the High Contracting Parties in pursuance of the present Treaty should be also claimed by one or several other Powers on account of other crimes or offences committed upon their respective territories, his extradition shall be granted to that State whose demand is earliest in date.
- Delay for presenting evidence. XIV.—If sufficient evidence for the extradition be not produced within 90 days from the date of the apprehension of the fugitive, or within such further time as the State applied to or the proper tribunal thereof shall direct, the fugitive shall be set at liberty.
- Articles seized. XV.—When extradition is conceded the papers and other articles connected with the offence or its authors, or which were in their possession at the time of their arrest, shall be delivered to the State to which extradition is granted.
- Expenses. This State shall be bound to return them after the termination of the trial, if any persons shall satisfy the authorities of the State granting extradition that they have a right to them.
- Expenses. XVI.—All expenses connected with extradition shall be borne by the demanding State.
- Extradition by British Colonies. XVII.—The stipulations of the present Treaty shall be applicable to the Colonies and foreign possessions of His Britannic Majesty, so far as the laws in such Colonies and foreign possessions allow.
- Extradition by British Colonies. XVIII.—The requisition for the surrender of a fugitive criminal who has taken refuge in any of such Colonies or foreign possessions, shall be made to the Governor or chief authority of such Colony or possession by the chief Consular Officer of the Republic of Peru in such Colony or possession.
- Extradition to British Colonies. XIX.—The Governor or chief authority may dispose of the requisition, in accordance with the laws of the territory in which he exercises authority, and shall be at liberty to grant the surrender or to refer the matter to his Government.
- Extradition to British Colonies. XX.—Requisitions for the surrender of a fugitive criminal emanating from any Colony or foreign possession of His Britannic Majesty shall be governed by the rules laid down in the preceding Articles of the present Treaty.
- XXI.—The present Treaty shall come into force 10 days after its publication, in conformity with the forms prescribed by the laws of the High Contracting Parties. It may be

terminated by either of the High Contracting Parties by a notice not exceeding one year and not less than 6 months. Peru.

It shall be ratified after receiving the approval of the Congress of the Republic of Peru, and the ratifications shall be exchanged at Lima as soon as possible.

PORTUGAL.

[Treaty, 17th October, 1892. O. in C. 3rd March, 1894.
Acts in force from 19th March, 1894.]

I.—The High Contracting Parties engage to deliver up to each other those persons who, being accused or convicted of a crime or offence committed in the territory of the one Party, shall be found within the territory of the other Party stated, under the circumstances and conditions in the present Treaty. Agreement to extradite.

II.—The crimes or offences for which the extradition is to be granted are the following:— Extradition offences.

1. Murder (including assassination, infanticide, and poisoning), or attempt or conspiracy to murder.

2. Manslaughter.

3. Maliciously wounding or inflicting grievous bodily harm.

4. Assault occasioning actual bodily harm.

5. Counterfeiting or altering money, either metallic or of any other kind representing the first named, or uttering counterfeit or altered money of any of those kinds.

6. Knowingly making any instrument, tool, or engine adapted and intended for counterfeiting coin.

1. Homicidio voluntario (incluido homicidio com premeditação, infanticidio e envenenamento), tentativa ou conluio para assassinar.

2. Homicidio simples.

3. Ferimentos voluntarios ou grave lesão corporal.

4. Aggressão da qual resultasse de facto lesão corporal.

5. Falsificação ou adulteração de moeda, quer seja d'especie metallica, quer d'outra qualquer especie representando aquella, ou introducção na circulação de moeda falsificada ou adulterada de qualquer d'aquellas especies.

6. Fabrico intencional de instrumento, utensilio, ou apparelho apropriado ou destinado ao fabrico de moeda falsa.

Portugal.

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| <p>7. Forgery, counterfeiting or altering, or uttering what is forged or counterfeited or altered.</p> <p>8. Embezzlement or larceny.</p> <p>9. Malicious injury to property, if the offence be indictable.</p> <p>10. Obtaining money, goods, or valuable securities by false pretences.</p> <p>11. Receiving money, valuable security, or other property, knowing the same to have been stolen, embezzled, or unlawfully obtained.</p> <p>12. Crimes against bankruptcy law.</p> <p>13. Fraud by a bailee, banker, agent, factor, trustee, or director or member, or public officer, of any company, made criminal by any law for the time being in force.</p> <p>14. Perjury, or subornation of perjury.</p> <p>15. Rape.</p> <p>16. Carnal knowledge, or any attempt to have carnal knowledge, of a girl under 16 years of age.</p> <p>17. Indecent assault.</p> <p>18. Administering drugs or using instruments with intent to procure the miscarriage of a woman.</p> <p>19. Abduction.</p> <p>20. Bigamy.</p> <p>21. Child-stealing.</p> | <p>7. Falsificação, imitação fraudulenta ou viciação, e a passagem ou introdução na circulação do que se falsificou, imitou, ou viciou.</p> <p>8. Descaminho ou furto.</p> <p>9. Damno voluntario causado em propriedade alheia, se constituir delicto ou crime.</p> <p>10. Aquisição fraudulenta de dinheiro, fazenda, ou titulos de valor.</p> <p>11. Receptação de dinheiro, titulo de valor, ou outra especie de propriedade havendo certeza de ter sido roubada, subtrahida, ou illegitimamente adquirida.</p> <p>12. Crimes contra a legislação relativa a fallencias.</p> <p>13. Fraude commetida por depositario, banqueiro, agente, commissario, curador, ou director ou membro ou empregado de companhia que deva reputar-se criminosa em razão de lei vigente.</p> <p>14. Perjurio ou suborno para perjurar.</p> <p>15. Violação.</p> <p>16. Estupro, ou tentativa de estupro, em rapariga menor de 16 annos.</p> <p>17. Ultrage ao pudôr.</p> <p>18. Propinação de substancias ou emprego de instrumentos tendentes a produzir aborto.</p> <p>19. Rapto.</p> <p>20. Bigamia.</p> <p>21. Substracção de menores.</p> |
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22. Abandoning children, exposing or unlawfully detaining them.

23. Kidnapping and false imprisonment.

24. Burglary or house-breaking.

25. Arson.

26. Robbery with violence.

27. Any malicious act done with intent to endanger the safety of any person in a railway train.

28. Threats by letter or otherwise, with intent to extort.

29. Piracy by law of nations.

30. Sinking or destroying a vessel at sea, or attempting or conspiring to do so.

31. Assaults on board a ship on the high seas, with intent to destroy life or to do grievous bodily harm.

32. Revolt, or conspiracy to revolt by two or more persons on board a ship on the high seas against the authority of the master.

33. Dealing in slaves in such a manner as to constitute a criminal offence against the laws of both States.

Extradition is also to be granted for participation in any of *Accessories.* the aforesaid crimes, provided such participation be punishable by the laws of both the Contracting Parties.

Extradition may also be granted, at the discretion of the State *Other offence.* applied to, in respect of any other crime for which, according to the laws of both the Contracting Parties for the time being in force, the grant can be made.

22. Abandono de infantes, exposiçãõ, ou detençãõ illegal dos mesmos. Portugal.

23. Rapto violento e carcere privado.

24. Rubo con arrombamento durante a noite ou arrombamento de domicilio para furtar.

25. Fogo posto.

26. Furto com violencia.

27. Acto voluntario que ponha em risco á segurança d'alguem em trem de via ferrea.

28. Ameaças por carta ou de outra forma, para realizar extorsão.

29. Pirateria segundo o direito das gentes.

30. Submersão ou destruição de navio no mar, tentativa ou conluio para esse fim.

31. Agressão a bordo ne navio no alto mar no intuito de destruir vidas ou causar grave lesão corporal.

32. Revolta ou conluio para revolta levada a effeito por duas ou mais pessôas a bordo-de embarcaçao no mar alto contre a autoridade do capitão.

33. Trafico de escravos realisado por forma que constitua violacão das leis d'ambos os Estados.

Portugal.	The Portuguese Government will not deliver up any person either guilty or accused of any crime punishable with death.
Crimes punishable with death.	III.—The Portuguese Government will not grant the extradition of any Portuguese subject, and Her Britannic Majesty's Government will not grant the extradition of any British subject; but in the case of a naturalized subject, this Article shall only be applicable if the naturalization was obtained previous to the commission of the crime giving rise to the application for extradition.
Subjects.	IV.—The extradition shall not take place if the person claimed on the part of the British Government, or the person claimed on the part of the Portuguese Government, has already been tried and discharged or punished, or is still under trial, within the territories of the two High Contracting Parties respectively, for the crime for which his extradition is demanded.
No extradition if person has been or is being tried.	If the person claimed on the part of the British Government, or if the person claimed on the part of the Portuguese Government, should be under examination, or is undergoing sentence under a conviction for any other crime within the territories of the two High Contracting Parties respectively, his extradition shall be deferred until after he has been discharged, whether by acquittal, or on expiration of his sentence, or otherwise.
Trial for another offence pending, surrender postponed.	V.—The extradition shall not take place if, subsequently to the commission of the crime, or the institution of the penal prosecution, or the conviction thereon, exemption from prosecution or punishment has been acquired by lapse of time, according to the laws of the State applied to.
No extradition if offence prescribed.	VI.—A fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded is one of a political character, or if he prove that the requisition for his surrender has in fact been made with a view to try or punish him for an offence of a political character.
Political offences.	VII.—A person surrendered can in no case be kept in prison or be brought to trial in the State to which the surrender has been made, for any other crime, or on account of any other matters, than those for which the extradition shall have taken place, until he has been restored, or had an opportunity of returning, to the State by which he has been surrendered. This stipulation does not apply to crimes committed after the extradition.
Trial after surrender to be limited to extradition offence.	VIII.—The requisition for extradition shall be made through the Diplomatic Agents of the High Contracting Parties respectively.
Requisitions.	

The requisition for the extradition of an accused person must be accompanied by a warrant of arrest issued by the competent authority of the State requiring the extradition, and by such evidence as, according to the laws of the place where the accused is found, would justify his arrest if the crime had been committed there. Portugal.

Arrest to be justified by law of extraditing State;

If the requisition relates to a person already convicted, it must be accompanied by the sentence of condemnation passed against the convicted person by the competent Court of the State that makes the requisition for extradition. evidence of conviction.

A sentence passed in *contumaciam* is not to be deemed a conviction, but circumstances may cause a person so sentenced *in contumaciam* to be dealt with as an accused person.

IX.—If the requisition for extradition be in accordance with the foregoing stipulations, the competent authorities of the State applied to shall proceed to the arrest of the fugitive. Arrest.

X.—If the fugitive has been arrested in the British dominions, he shall forthwith be brought before a competent Magistrate, who is to examine him, and to conduct the preliminary investigation of the case, just as if the apprehension had taken place for a crime committed in the British dominions. Procedure in British dominions.

In the examination which they have to make in accordance with the foregoing stipulations, the authorities of the British dominions shall admit as valid evidence depositions or statements on oath or the affirmations of witnesses taken in the dominions of Portugal or copies thereof, and likewise the warrants and sentences issued therein, and certificates of, or judicial documents stating the fact of, a conviction, provided the same are authenticated as follows:— Evidence taken in Portugal to be received.

1. A warrant must purport to be signed by a Portuguese Judge, Magistrate, or officer. Authentication of documents.

2. Depositions or affirmations, or the copies thereof, must purport to be certified under the hand of a Portuguese Judge, Magistrate, or officer to be the original depositions or affirmations, or to be the true copies thereof, as the case may require.

3. A certificate of, a judicial document stating the fact of, a conviction must purport to be certified by a Portuguese Judge, Magistrate, or officer.

4. In every case such warrant, deposition, affirmation, copy, certificate, or judicial document must be authenticated either by the oath of some witness, or by being sealed with the official seal of the Minister of Justice, or some other Portuguese Minister; but any other mode of authentication for the time

- Portugal.** being permitted by the law in that part of the British dominions where the examination is taken may be substituted for the foregoing.
- Procedure in Portugal.** XI.—If the fugitive has been arrested in the dominions of Portugal, his surrender shall be granted if upon examination by a competent authority it appears that the documents furnished by the British Government contain sufficient *prima facie* evidence to justify the extradition.
- British evidence to be admtded.** The Portuguese authorities shall admit as valid evidence records drawn up by the British authorities of the depositions of the witnesses or copies thereof, and records of conviction, or other judicial documents or copies thereof: Provided that the said documents be signed or authenticated by an authority whose competence shall be certified by the seal of a Minister of State of Her Britannic Majesty.
- Extradition to be justified by law of extraditing State.** XII.—The extradition shall not take place unless the evidence be found sufficient, according to the laws of the State applied to, either to justify the committal of the prisoner for trial, if the crime had been committed in the territory of the said State, or to prove that the prisoner is the identical person convicted by the Courts of the State which makes the requisition, and that the crime of which he has been convicted is one in respect of which extradition could, at the time of such conviction, have been granted by the State applied to. In Her Britannic Majesty's dominions the fugitive criminal shall not be surrendered until the expiration of 15 days from the date of his being committed prison to await his surrender.
- Claims by several States.** XIII.—If the individual claimed by one of the two High Contracting Parties in pursuance of the present Treaty should be also claimed by one or several other Powers, on account of other crimes or offences committed upon their respective territories, his extradition shall be granted to that State whose demand is earliest in date.
- Delays for presenting evidence.** XIV.—If sufficient evidence for the extradition be not produced within 2 months from the date of the apprehension of the fugitive, or within such further time as the State applied to, or the proper tribunal thereof shall direct, the fugitive shall be set at liberty.
- Articles seized.** XV.—All articles seized which were in the possession of the person to be surrendered at the time of his apprehension shall, if the competent authority of the State applied to for the extradition has ordered the delivery thereof, be given up when

the extradition takes place; and the said delivery shall extend Portugal.
not merely to the stolen articles, but to everything that may
serve as a proof of the crime.

XVI.—All expenses connected with extradition shall be borne ^{Expenses.}
by the demanding State.

XVII.—The stipulations of the present Treaty shall be applic- ^{Extradition to}
able to the foreign or colonial possessions of both of the High ^{and from}
Contracting Parties, so far as the laws for the time being in force ^{Colonies.}
in such Colonies and foreign possessions respectively will allow.

The requisition for the surrender of a fugitive criminal who
has taken refuge in any of such Colonies or foreign possessions
may be made to the Governor or chief authority of such Colony
or possession by the chief Consular Officer of the other State in
such Colony or possession.

Such requisitions may be disposed of, subject always, as nearly
as may be, and so far as the law of such Colony or foreign
possession will allow, to the provisions of this Treaty, by the
said Governor or chief authority, who, however, shall be at
liberty either to grant the surrender, or to refer the matter to his
Government.

The High Contracting Parties shall, however, be at liberty to
make special arrangements in their respective Colonies and
foreign possessions for the surrender of criminals who may take
refuge therein, on the basis, as nearly as may be, and so far as
the law of such Colony or foreign possession will allow, of the
provisions of the present Treaty.

Requisitions for the surrender of a fugitive criminal emanating
from any Colony or foreign possession of either of the High
Contracting Parties shall be governed by the rules laid down in
the preceding Articles of the present Treaty.

XVI.—The present Treaty shall come into force 10 days after
its publication, in conformity with the forms prescribed by the
laws of the High Contracting Parties. It may be terminated by
either of the High Contracting Parties at any time on giving to
the other 6 months' notice of its intention to do so.

The Treaty shall be ratified, and the ratifications shall be
exchanged at Lisbon as soon as possible.

Roumania.

ROUMANIA.

[Treaty, 21st March, 1893. Protocols, 21st March, 1893, 13th March, 1894. O. in C. 30th April, 1894. Acts in force from 21st May, 1894.]

Agreement to extradite.

I.—The High Contracting Parties engage to deliver up to each other those persons who, being accused or convicted of a crime or offence in the territory of the one Party, shall be found within the territory of the other Party, under the circumstances and conditions stated in the present Treaty.

Extradition offences.

II.—The crimes or offences for which the extradition is to be granted are the following:—

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| <p>1. Murder, or attempt, or conspiracy to murder.</p> | <p>§ 1. Omor saũ tentativa de omor, saũ complot avẽnd de scop acestã crimã.</p> |
| <p>2. Manslaughter.</p> | <p>2. Omucidere fãrã precugetare saũ pãndire.</p> |
| <p>3. Assault occasioning actual bodily harm. Maliciously wounding or inflicting grievous bodily harm.</p> | <p>3. Loviri si rãniri grave.</p> |
| <p>4. Counterfeiting or altering money, or uttering counterfeit or altered money.</p> | <p>4. Contrafacere saũ alterare de monede: punerea în circulație a monedelor false saũ alterate.</p> |
| <p>5. Knowingly making any instrument, tool, or engine adapted and intended for counterfeiting coin.</p> | <p>5. Fabricarea cu intenție a unui instrument, ustensil, saũ uneltã destinatã la contrafacearea monedelor tãreĩ.</p> |
| <p>6. Forgery, counterfeiting, or altering or uttering what is forged, or counterfeited, or altered.</p> | <p>6. Falsuri în scripte, titluri, efecte saũ valori; alterarea saũ punerea în circulare a tot ce este ast-fel falsificat ori contrafãcut ori alterat.</p> |
| <p>7. Embezzlement or larceny.</p> | <p>7. Sustragerea fraudulósã saũ furtul.</p> |
| <p>8. Malicious injury to property, by explosives or otherwise, if the offence be indictable.</p> | <p>8. Distrugerea ori degradarea ori-cãrei proprietãti prin explosive saũ alt-fel, când faptul este încriminat si pedepsit cu pedepse criminale saũ corecționale.</p> |

§ In the Roumanian text 's' and 't' are often used with a dot underneath. As these types are not available, I have substituted these consonants in italics.

9. Obtaining money, goods, or valuable securities by false pretences.

10. Receiving money, valuable security, or other property knowing the same to have been stolen, embezzled, or unlawfully obtained.

11. Crimes against bankruptcy law.

12. Fraud by a bailee, banker, agent, factor, trustee, or director, or member or public officer of any company, made criminal by any law for the time being in force.

13. Perjury, or subornation of perjury.

14. Rape.

15. Carnal knowledge, or any attempt to have carnal knowledge, of a girl under 14 years of age.

16. Indecent assault.

17. Procuring miscarriage, administering drugs or using instruments with intent to procure the miscarriage of a woman.

18. Abduction.

19. Child-stealing.

20. Abandoning children, exposing or unlawfully detaining them.

21. Kidnapping and false imprisonment.†

22. Burglary or house-breaking.

9. Escrocherie de bani, valori sau alte obiecte sub false pre-texte. Roumania.

10. Tănuire frauduloasă de bani, valori sau alte obiecte, provenind din escrocherie, furt sau deturnare.

11. Crime contra legilor asupra bancrutei.

12. Frauda (abus de încredere) unui administrator bancher, agent, comisionar, curator sau director, ori membru ori functionar al unei societăți orecare, dacă faptul este pedepsit de legile în vigore.

13. Mărturia mincinosă sau subornațiunea martorilor.

14. Violul.

15. Atentat la pudore asupra persoanei unei fete mai mică de 14 ani, sau tentativa acestui fapt.

16. Atentat la pudore cu violentă.

17. Avort, administrare de substante sau intrebuintare de instrumente în intențiunea de a provoca avortul.

18. Răpire de minori.

19. Furt de copii.

20. Abandonare, expositiune sau sechestrare ilegală de copii.

21. Sechestrare sau detentiune ilegală.†

22. Efracțiunea sau escalada unei locuinte si a dependintelor

† This clause is explained by the Protocol of 13th March, 1894; *post*, p. 198.

Roumania.

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| <p>23. Arson.</p> <p>24. Robbery with violence.</p> <p>25. Any malicious act done with intent to endanger the safety of any person in a railway train.</p> <p>26. Threats by letter or otherwise, with intent to extort.</p> <p>27. Piracy by [the] law of nations.</p> <p>28. Sinking or destroying a vessel at sea, or attempting or conspiring to do so.</p> <p>29. Assaults on board a ship on the high seas, with intent to destroy life, or do grievous bodily harm.</p> <p>30. Revolt, or conspiracy to revolt, by two or more persons on board a ship on the high sea against the authority of the master.</p> <p>31. Dealing in slaves.</p> | <p>sale în scopul de a comite un delict.</p> <p>23. Incendiū.</p> <p>24. Furt cu violență.</p> <p>25. Orī-ce act comis cu intenție de a pune în pericol viața persónelor aflate într'un tren de drum de fier.</p> <p>26. Amenintări, scrise sau altel, făcute în scop de extorsiune.</p> <p>27. Piraterie, considerată ca crimă dupe dreptul ginților.</p> <p>28. Inecarea, naufragierea sau distrugerea unui vas pe mare, sau tentativa sau complotul având această crimă de scop.</p> <p>29. Atacarea pe bordul unui vas în largul mării, în scop de omucidere sau pentru a faptui grave leșiuni corporale.</p> <p>30. Revolta sau complotul de revoltă, a duoē sau mai multe persóne pe bordul unui vas în largul mării, contra autorității cupitanului.</p> <p>31. Negotul ca sclavi.</p> |
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Accessories.

Extradition is also to be granted for participation in any of the aforesaid crimes, provided such participation be punishable by the laws of both Contracting Parties.

Protocol,
21st March, 1893.

The Roumanian Government may in its absolute discretion refuse to deliver up any person charged with a crime punishable with death.

Subjects.

III.—Either Government may, in its absolute discretion, refuse to deliver up its own subjects to the other Government.

No extradition if person has been or is being tried.

IV.—The extradition shall not take place if the person claimed has already been tried and discharged or punished, or is still under trial, within the territories of the two High Contracting Parties respectively, for the crime for which his extradition is demanded.

If the person claimed should be under examination, or is

undergoing sentence under a conviction, for any other crime within the territories of the two High Contracting Parties respectively, his extradition shall be deferred until after he has been discharged, whether by acquittal or on expiration of his sentence, or otherwise. Roumania.
Trial for another offence pending, surrender postponed.

V.—The extradition shall not take place if, subsequently to the commission of the crime, or the institution of the penal prosecution or the conviction thereon, exemption from prosecution or punishment has been acquired by lapse of time, according to the laws of the State applied to. No extradition if offence prescribed.

VI.—A fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded is one of a political character, or if he prove that the requisition for his surrender has in fact been made with a view to try or punish him for an offence of a political character. Political offences.

VII.—A person surrendered can in no case be kept in prison or be brought to trial in the State to which the surrender has been made, for any other crime or on account of any other matters than those for which the extradition shall have taken place, until he has been restored or had an opportunity of returning to the State by which he has been surrendered. Trial after extradition to be limited to extradition offence.

This stipulation does not apply to crimes committed after the extradition.

VIII.—The requisition for extradition shall be made through the Diplomatic Agents of the High Contracting Parties respectively. Requisitions.

The requisition for the extradition of an accused person must be accompanied by a warrant of arrest issued by the competent authority of the State requiring the extradition, and by such evidence as, according to the laws of the place where the accused is found, would justify his arrest if the crime had been committed there. Arrest to be justified by law of extraditing State;

If the requisition relates to a person already convicted, it must be accompanied by the sentence of condemnation passed against the convicted person by the competent Court of the State that makes the requisition for extradition. evidence of conviction.

A sentence passed *in contumaciam* is not to be deemed a conviction, but a person so sentenced may be dealt with as an accused person.

IX.—If the requisition for extradition be in accordance with the foregoing stipulations, the competent authorities of the State applied to shall proceed to the arrest of the fugitive. Arrest.

Roumania.	X.—If the fugitive has been arrested in the British dominions, he shall forthwith be brought before a competent Magistrate, who is to examine him, and to conduct the preliminary investigation of the case, just as if the apprehension had taken place for a crime committed in the British dominions.
Procedure in British dominions.	
Evidence taken in Roumania to be received.	In the examinations which they have to make in accordance with the foregoing stipulations, the authorities of the British dominions shall admit as valid evidence depositions or the sworn affirmations of witnesses taken in Roumania, or copies thereof, and likewise the warrants and sentences issued therein, and certificates of, or judicial documents stating the fact of, a conviction, provided the same are authenticated as follows:—
Authentication of documents.	<ol style="list-style-type: none"> 1. A warrant must purport to be signed by a Judge, Magistrate, or Judicial Officer of Police of Roumania. 2. Depositions or affirmations, or the copies thereof, must purport to be certified under the hand of a Judge, Magistrate, or Judicial Officer of Police of Roumania, to be the original depositions or affirmations, or to be the true copies thereof, as the case may require. 3. A certificate of or judicial document stating the fact of a conviction must purport to be certified by a Judge, Magistrate, or Judicial Officer of Police of Roumania. 4. In every case such warrant, deposition, affirmation, copy, certificate, or judicial document must be authenticated either by the oath of some witness, or by being sealed with the official seal of the Minister of Justice, or of Foreign Affairs of Roumania; but any other mode of authentication for the time being permitted by the law in that part of the British dominions where the examination is taken, may be substituted for the foregoing.
Procedure in Roumania.	XI.—On the part of the Roumanian Government, the extradition shall take place as follows in Roumania: The Minister, or other Diplomatic Agent of Her Britannic Majesty in Roumania shall send to the Minister for Foreign Affairs, in support of each demand for extradition, an authentic and duly legalised copy either of a certificate of condemnation, or of a warrant of arrest against an incriminated or accused person, clearly shewing the nature of the crime or offence on account of which proceedings are being taken against the fugitive. The judicial document so produced shall be accompanied by a description and other particulars serving to establish the identity of the person whose extradition is claimed.

In case the documents produced by the British Government establish the identity, and the particulars gathered by the Roumanian police authorities for the same purposes, should be deemed to be insufficient, notice thereof shall forthwith be given to the Minister or other Diplomatic Agent of Her Britannic Majesty in Roumania, and the individual whose extradition is desired, if he has been arrested, shall remain in detention until the British Government has produced new elements of proof to establish his identity, or to clear up any other difficulties arising in the examination. Roumania.

XII.—The extradition shall not take place unless the evidence be found sufficient, according to the laws of the State applied to, either to justify the committal of the prisoner for trial, in case the crime had been committed in the territory of the said State, or to prove that the prisoner is the identical person convicted by the Courts of the State which makes the requisition, and that the crime of which he has been convicted is one in respect of which extradition could, at the time of such conviction, have been granted by the State applied to. In Her Britannic Majesty's dominions the fugitive criminal shall not be surrendered until the expiration of 15 days from the date of his being committed to prison to await his surrender. Evidence to justify committal for trial in extraditing State.

XIII.—If the individual claimed by one of the two High Contracting Parties in pursuance of the present Treaty should be also claimed by one or several other Powers, on account of other crimes or offences committed upon their respective territories, his extradition shall be granted to that State whose demand is earliest in date. Claims by several States.

XIV.—If sufficient evidence for the extradition be not produced within 2 months from the date of the apprehension of the fugitive, or within such further time as the State applied to, or the proper tribunal thereof shall direct, the fugitive shall be set at liberty. Delay for presenting evidence.

XV.—All articles seized which were in the possession of the person to be surrendered at the time of his apprehension, shall, if the competent authority of the State applied to for the extradition has ordered the delivery thereof, be given up when the extradition takes place, and the said delivery shall extend not merely to the stolen articles, but to everything that may serve as a proof of the crime. Articles seized.

XVI.—All expenses connected with extradition shall be borne by the demanding State. Expenses.

Roumania.

XVII.—The stipulations of the present Treaty shall be applicable to the Colonies and foreign possessions of Her Britannic Majesty, so far as the laws in such Colonies and foreign possessions respectively will allow.

**Extradition by
British Colonies.**

The requisition for the surrender of a fugitive criminal, who has taken refuge in any of such Colonies or foreign possessions, shall be made to the Governor or chief authority of such Colony or possession by any person authorised to act in such Colony or possession as a Consular Officer of Roumania.

Such requisition may be disposed of, subject always, as nearly as may be, and so far as the law of such Colony or foreign possession will allow, to the provisions of this Treaty, by the said Governor or chief authority, who, however, shall be at liberty either to grant the surrender or to refer the matter to his Government.

Her Britannic Majesty shall, however, be at liberty to make special arrangements in the British Colonies and foreign possessions for the surrender of criminals from Roumania who may take refuge within such Colonies and foreign possessions, on the basis, so far as the law of such Colony or foreign possession will allow, of the provisions of the present Treaty.

**Extradition to
British Colonies**

Requisitions for the surrender of a fugitive criminal emanating from any Colony or foreign possession of Her Britannic Majesty shall be governed by the rules laid down in the preceding Articles of the present Treaty.

XVIII.—The present Treaty shall come into force 10 days after its publication, in conformity with the forms prescribed by the laws of the High Contracting Parties. It may be terminated by either of the High Contracting Parties at any time on giving to the other 6 months' notice of its intention to do so.

The Treaty shall be ratified, and the ratifications shall be exchanged at Bucharest as soon as possible.

Protocol, 13th March, 1894.

In order to avoid the possibility of any misunderstanding arising from the present text of § 21 of Article II of the Treaty of Extradition concluded between Great Britain and Roumania on the 21st (9th) of March, 1893, the Undersigned . . . have agreed as follows:—

**Explanation of
"kidnapping"
in Art. II.**

The fact of having kidnapped or falsely imprisoned one or more persons will not admit of a requisition for extradition being made unless the act shall have been committed by private

individuals. No such requisition can be made as against public Roumania.
functionaries who may have been guilty of the act in question
while in the performance of their duties.

The present Protocol shall be considered as approved and sanctioned by the respective Governments without any special ratification, by the sole fact of the exchange of the ratifications of the Treaty to which it refers.

RUSSIA.

[Treaty, 24th November, 1886. O. in C. 7th March, 1887.
Acts in force from 21st March, 1887.]

I.—The High Contracting Parties engage to deliver up to each ^{Agreement to}
other those persons who, being accused or convicted of a crime ^{extradite.}
committed in the territory of the one Party, shall be found
within the territory of the other Party, under the circumstances
and conditions stated in the present Treaty.

II.—The crimes or offences for which the extradition is to be ^{Extradition}
granted are the following:— ^{offences.}

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| 1. Murder, or attempt, or conspiracy to murder. | 1. Meurtre, ou tentative de meurtre, ou complot ayant ce crime pour but. |
| 2. Manslaughter. | 2. Homicide sans préméditation ou guet-apens. |
| 3. Counterfeiting or altering money, or uttering counterfeit or altered money. | 3. Contrefaction ou altération de monnaie, mise en circulation de monnaie contrefaite ou altérée. |
| 4. Forgery, counterfeiting, or altering, or uttering what is forged, or counterfeited, or altered. | 4. Faux, contrefaction ou altération, ou mise en circulation de ce qui est falsifié, ou contrefait, ou altéré. |
| 5. Embezzlement or larceny. | 5. Détournement frauduleux, ou vol. |
| 6. Malicious injury to property if the offence be indictable. | 6. Destruction ou dégradation de toute propriété, lorsque le fait incriminé est punissable de peines criminelles ou correctionnelles. |

Russia.

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| <p>7. Obtaining money or goods by false pretences.</p> <p>8. Crimes against bankruptcy law.</p> <p>9. Fraud by a bailee, banker, agent, factor, trustee, or director, or member or public officer of any company, made criminal by any law for the time being in force.</p> <p>10. Perjury, or subornation of perjury.</p> <p>11. Rape.</p> <p>12. Carnal knowledge, or any attempt to have carnal knowledge, of a girl under 16 years of age.</p> <p>13. Indecent assault.</p> <p>14. Administering drugs or using instruments with intent to procure the miscarriage of a woman.</p> <p>15. Abduction.</p> <p>16. Child-stealing.</p> <p>17. Kidnapping and false imprisonment.</p> <p>18. Burglary or house-breaking.</p> <p>19. Arson.</p> <p>20. Robbery with violence.</p> <p>21. Maliciously wounding, or inflicting grievous bodily harm.</p> <p>22. Threats by letter, or otherwise, with intent to extort.</p> | <p>7. Escroquerie d'argent, ou d'autres objets, sous de faux prétextes.</p> <p>8. Crimes contre les lois sur la banqueroute.</p> <p>9. Fraude (abus de confiance) par un administrateur, banquier, agent, commissionnaire, curateur, ou directeur, ou membre ou fonctionnaire d'une société quelconque, pour autant que le fait est puni par les lois en vigueur.</p> <p>10. Faux serment ou subornation de témoins.</p> <p>11. Viol.</p> <p>12. Commerce charnel avec une jeune fille âgée de moins de 16 ans, ou tentative à ce fait.</p> <p>13. Attentat à la pudeur avec violence.</p> <p>14. Administration de substances ou emploi d'instruments dans l'intention de provoquer l'avortement.</p> <p>15. Enlèvement.</p> <p>16. Vol d'enfants.</p> <p>17. Sequestration ou détention illégale.</p> <p>18. Effraction ou escalade d'une habitation et de ses dépendances dans le but de commettre un crime.</p> <p>19. Incendie volontaire.</p> <p>20. Vol avec violence.</p> <p>21. Blessures ou graves injures corporelles, infligées avec mauvaise intention.</p> <p>22. Menaces écrites ou autres faites en vue d'extorsion.</p> |
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23. Piracy by law [the] of nations.

24. Sinking or destroying a vessel at sea, or attempting or conspiring to do so.

25. Assaults on board a ship on the high seas with intent to destroy life, or to do grievous bodily harm.

26. Revolt, or conspiracy to revolt, by two or more persons on board a ship on the high seas against the authority of the master.

27. Dealing in slaves in such a manner as to constitute a criminal offence against the laws of both States.

23. Piraterie considérée comme crime par le droit des gens.

24. Submersion, échouement ou destruction d'un navire en mer, ou tentative ou complot ayant ce crime pour but.

25. Attaque à bord d'un navire en haute mer dans le but d'homicide ou afin de porter de graves lésions corporelles.

26. Révolte ou complot de révolte par deux ou plusieurs personnes à bord d'un navire en haute mer, contre l'autorité du capitaine.

27. Traite des esclaves telle qu'elle est punie par les lois des deux pays.

Russia.

Extradition is also to be granted for participation in any of the aforesaid crimes, provided such participation be punishable by the laws of the State applied to. Accessories.

Extradition may also be granted, at the discretion of the State applied to, in respect of any other crime for which, according to the laws of both the Contracting Parties for the time being in force the grant can be made. Other offences.

III.—Either Government may, in its absolute discretion, refuse to surrender its own subjects to the other Government. Subjects.

IV.—The extradition shall not take place if the person claimed on the part of the British Government, or the person claimed on the part of the Russian Government, has already been tried and discharged or punished, or is still under trial, within the Russian or British dominions respectively, for the crime for which his extradition is demanded. No extradition if person has been or is being tried.

If the person claimed on the part of the British Government, or if the person claimed on the part of the Russian Government, should be under examination, or is undergoing sentence under a conviction, for any other crime within the Russian or British dominions respectively, his extradition shall be deferred until after he has been discharged, whether by acquittal, or on expiration of his sentence, or otherwise. Trial for another offence pending, surrender postponed.

Russia.	V.—The extradition shall not take place if, subsequently to the commission of the crime, or the institution of the penal prosecution, or the conviction thereon, exemption from prosecution or punishment has been acquired by lapse of time, according to the laws of the State applied to.
No extradition if offence prescribed.	
Political offences.	VI.—A fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded is one of a political character, or if he prove that the requisition for his surrender has in fact been made with a view to try or punish him for an offence of a political character.
Trial after surrender to be limited to extradition offence.	VII.—A person surrendered may in no case be kept in prison or be brought to trial in the State to which the surrender has been made, for any other crime, or on account of any other matters than those for which the extradition shall have taken place, until he has been restored or had an opportunity of returning to the State by which he has been surrendered. This stipulation does not apply to crimes committed after the extradition.
Requisitions.	VIII.—The requisition for extradition shall be made through the Diplomatic Agents of the High Contracting Parties respectively. The requisition for the extradition of an accused person must be accompanied by a warrant of arrest issued by the competent authority of the State requiring the extradition, and by such evidence as, according to the laws of the place where the accused is found, would justify his arrest if the crime had been committed there.
Arrest to be justified by law of extraditing State;	
evidence of conviction.	If the requisition relates to a person already convicted, it must be accompanied by the sentence of condemnation passed against the convicted person by the competent Court of the State that makes the requisition for extradition. A sentence passed in <i>contumaciam</i> is not to be deemed a conviction, but a person so sentenced may be dealt with as an accused person.
Arrest.	IX.—If the requisition for extradition be in accordance with the foregoing stipulations, the competent authorities of the State applied to shall proceed to the arrest of the fugitive.
Procedure in British dominions.	X.—If the fugitive has been arrested in the British dominions, he shall forthwith be brought before a competent Magistrate, who is to examine him, and to conduct the preliminary investigation of the case, just as if the apprehension had taken place for a crime committed in British dominions.

In the examinations which they have to make in accordance with the foregoing stipulations, the authorities of the British dominions shall admit as valid evidence the sworn depositions or the affirmations of witnesses taken in Russia, or copies thereof, and likewise the warrants and sentences issued therein, and certificates of, or judicial documents stating the fact of, a conviction, provided the same are authenticated as follows:—

1. A warrant must purport to be signed by a Judge, Magistrate, or officer of the Russian State.

2. Depositions or affirmations or the copies thereof must purport to be certified under the hand of a Judge, Magistrate, or officer of the Russian State, to be the original depositions or affirmations or to be true copies thereof, as the case may require.

3. A certificate of or judicial document stating the fact of a conviction must purport to be certified by a Judge, Magistrate, or officer of the Russian State.

4. In every case such warrant, deposition, affirmation, copy, certificate, or judicial document must be authenticated either by the oath of some witness, or by being sealed with the official seal of the Minister of Justice or some other Minister of the Russian State; but any other mode of authentication for the time being permitted by the law of the British dominion, where the examination is taken, may be substituted for the foregoing.

XI.—If the fugitive has been arrested in Russia his surrender shall be granted if upon examination by a competent authority it appears that the documents furnished by the British Government contain sufficient *prima facie* evidence to justify the extradition.

The Russian authorities shall admit as valid evidence records drawn up by the British authorities of the depositions of the witnesses, or copies thereof, and records of conviction, or other judicial documents or copies thereof: Provided that the said documents be signed or authenticated by an authority whose competence shall be certified by the seal of a Minister of State of Her Britannic Majesty.

XII.—The extradition shall not take place unless the evidence be found sufficient according to the laws of the State applied to, either to justify the committal of the prisoner for trial, in case the crime had been committed in the territory of the same State, or to prove that the prisoner is the identical person convicted by the Courts of the State which makes the requisition, and that the crime of which he has been convicted is one in respect of which extradition could, at the time of such conviction have

Russia.

Evidence taken
in Russia to be
received;

authentication
of documents.

Procedure in
Russia.

Evidence to
justify committal
for trial in
extraditing State.

Russia.	been granted by the State applied to. And the fugitive criminal shall not be surrendered until after the expiration of 15 days from the date of his committal to prison to await his surrender.
Claims by several States.	XIII.—If the individual claimed by one of the two High Contracting Parties in pursuance of the present Treaty should be also claimed by one or several other Powers, on account of other crimes or offences committed upon their respective territories, his extradition shall be granted to that State whose demand is earliest in date.
Delays for presenting evidence.	XIV.—If sufficient evidence for the extradition be not produced within 2 months from the date of the apprehension of the fugitive, or within such further time as the State applied to, or the proper tribunal thereof shall direct, the fugitive shall be set at liberty.
Articles seized.	XV.—All articles seized which were in the possession of the person to be surrendered, at the time of his apprehension, shall, if the competent authority of the State applied to for the extradition has ordered the delivery thereof, be given up when the extradition takes place; and the said delivery shall extend not merely to the stolen articles, but to everything that may serve as a proof of the crime.
Expenses.	XVI.—All expenses connected with extradition shall be borne by the demanding State.
Each State to take evidence for the other.	XVII.—When, for the purposes of a criminal matter, not being of a political character, pending in any of its Courts or tribunals, either Government shall desire to obtain the evidence of witnesses residing in the other State, a "Commission Rogatoire" to that end shall be sent through the diplomatic channel, and which shall be executed in conformity with the law of the State where the evidence is to be taken. The Government which sends the "Commission Rogatoire" will, however, take all necessary steps and pay all expenses for finding and procuring the attendance before the Magistrate of the witnesses named for examination in such Commission.
Extradition by British Colonies.	XVIII.—The stipulations of the present Treaty shall be applicable to the Colonies and foreign possessions of Her Britannic Majesty, so far as the laws for the time being in force in such Colonies and foreign possessions respectively will allow. The requisition for the surrender of a fugitive criminal who has taken refuge in any of such Colonies or foreign possessions may be made to the Governor or chief authority of such Colony or possession by the chief Consular Officer of the Russian Empire in such Colony or possession.

Such requisitions may be disposed of, subject always, as nearly as may be, and so far as the law of such Colony or foreign possession will allow, to the provisions of this Treaty, by the said Governor or chief authority, who, however, shall be at liberty either to grant the surrender or to refer the matter to his Government.

Russia.

Her Britannic Majesty shall, however, be at liberty to make special arrangements in the British Colonies and foreign possessions for the surrender of Russian criminals who may take refuge within such Colonies and foreign possessions on the basis, as nearly as may be, and so far as the law of such Colony or foreign possession will allow, of the provisions of the present Treaty.

Requisitions for the surrender of a fugitive criminal emanating from any Colony or foreign possession of Her Britannic Majesty shall be governed by the rules laid down in the preceding Articles of the present Treaty.

Extradition to
British Colonies.

XIX.—The present Treaty shall come into force 10 days after its publication, in conformity with the forms prescribed by the laws of the High Contracting Parties. It may be terminated by either of the High Contracting Parties, at any time on giving to the other 6 months notice of its intention to do so.

The Treaty shall be ratified, and the ratifications shall be exchanged at London as soon as possible.

SALVADOR.

[Treaty, 23rd June, 1881. O. in C. 16th December, 1882.
Acts in force from 13th January, 1883.]

I.—The High Contracting Parties engage to deliver up to each other, under the circumstances and conditions stated in the present Treaty, those persons who, being accused or convicted of any of the crimes or offences enumerated in Article II, committed in the territory of the one Party, shall be found within the territory of the other Party.

Agreement to
extradite.

II.—Extradition shall be reciprocally granted for the following crimes or offences:—

Extradition
offences.

1. Murder (including assassination, parricide, infanticide, poisoning), or attempt to murder.

1. Homicidio premeditado (incluyendo el asesinato, el parricidio, el infanticidio, el envenenamiento), ó tentativa de homicidio premeditado.

Salvador.

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| <p>2. Manslaughter.</p> <p>3. Administering drugs or using instruments with intent to procure the miscarriage of women.</p> <p>4. Rape.</p> <p>5. Aggravated or indecent assault; carnal knowledge of a girl under the age of 10 years; carnal knowledge of a girl above the age of 10 years and under the age of 12 years; indecent assault upon any female, or any attempt to have carnal knowledge of girl under 12 years of age.</p> <p>6. Kidnapping and false imprisonment, child-stealing, abandoning, exposing, or unlawfully detaining children.</p> <p>7. Abduction of minors.</p> <p>8. Bigamy.</p> <p>9. Wounding, or inflicting grievous bodily harm.</p> <p>10. Assaulting a magistrate, or peace or public officer.</p> <p>11. Threats, by letter or otherwise, with intent to extort money or other things of value.</p> <p>12. Perjury or subornation of perjury.</p> <p>13. Arson.</p> <p>14. Burglary or house-breaking, robbery with violence, larceny, or embezzlement.</p> | <p>2. Homicidio.</p> <p>3. Administracion de drogas ó el uso de instrumentos á fin de ocasionar el aborto en las mujeres.</p> <p>4. Estupro.</p> <p>5. Atentado al pudor con violencia; relaciones sensuales con una muchacha menor de diez años; relaciones sensuales con una muchacha mayor de diez años y menor de doce años; atentado al pudor con cualquiera mujer, ó tentativa alguna para tener relaciones sensuales con una muchacha menor de doce años.</p> <p>6. Hurto de niños ó adultos para trasportarlos á otro pais ó conservarlos en el mismo (plagio), indebida encarcelacion, abandono, exposicion, y encierro ilégal de niños ó adultos.</p> <p>7. Rapto de menores.</p> <p>8. Bigamia.</p> <p>9. Heridas ó golpes graves en el cuerpo.</p> <p>10. Violencias contra algun magistrado, oficial de paz ó público.</p> <p>11. Amenazas por medio de cartas o de otra manera, con ánimo de obtener indebidamente dinero ú otras cosas de valor.</p> <p>12. Perjurio, soborno para perjurio.</p> <p>13. Incendio voluntario.</p> <p>14. Robo con efraccion, robo con violencia, rateria, y hurto.</p> |
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15. Fraud by a bailee, banker, agent, factor, trustee, director, member, or public officer of any company, made criminal by any law for the time being in force.

15. Fraude cometido por un depositario de bienes, banquero, mandatario, comisionista, administrador de bienes ajenos, tutor, curador, liquidador, sindico, oficial ministerial, director, miembro ú oficial público de alguna compañía, considerado el fraude como criminal por alguna ley vigente.

16. Obtaining money, valuable security, or goods by false pretences: receiving any money, valuable security, or other property, knowing the same to have been stolen or unlawfully obtained.

16. Estafa ó todo lo que sea obtener dinero, fianza ó mercaderias por media de falsos datos; recibir dinero, fianza ó cualesquiera otros valores, sabiendo que han sido robados ó adquiridos en oposicion a las leyes.

17.—(a) Counterfeiting or altering money, or bringing into circulation counterfeited or altered money.

17.—(a) Falsificar ó alterar moneda, ó poner en circulacion moneda falsa ó alterada.

(b) Forgery, or counterfeiting or altering, or uttering what is forged, counterfeited, or altered.

(b) Contrahacer, falsificar ó alterar, ó poner en circulacion lo que está falsificado, contrahecho ó alterado.

(c) Knowingly making, without lawful authority, any instrument, tool, or engine, adapted and intended for the counterfeiting of coin of the realm.

(c) Hacer premeditadamente, sin permiso de la autoridad constituida, algun instrumento, herramienta ó máquina con la intencion de falsificar ó contrahacer la moneda nacional.

18. Crimes against bankruptcy law.

18. Crímenes cometidos contra la ley de quiebras.

19. Any malicious act done with intent to endanger persons in a railway train.

19. Cualquier acto doloso enjucutado con la mira de poner en peligro las personas que viajen en trenes de ferro carriles.

20. Malicious injury to property, if such offence be indictable.

20. Perjuicio malicioso causado á la propiedad, si el delito es justiciable.

Salvador.	21. Crimes committed at sea:—	21. Delitos cometidos en el mar:—
	(a) Piracy by the law of nations.	(a) Pirateria, segun la ley de las naciones.
	(b) Sinking or destroying a vessel at sea, or attempting or conspiring to do so.	(b) Echar á pique ó destruir un buque en el mar, ó esforzarse ó conspirar para hacerlo.
	(c) Revolt, or conspiracy to revolt, by two or more persons on board a ship on the high seas against the authority of the master.	(c) Sublevacion ó conspiracion para rebelarse, de dos ó más personas á bordo de un buque, en alta mar, contra la autoridad de capitan.
	(d) Assault on board a ship on the high seas with intent to destroy life, or to do grievous bodily harm.	(d) Ataques á bordo de un buque en alta mar, con intencion de quitar la vida ó de hacer otro daño grave corporal.
	22. Dealing in slaves in such manner as to constitute a criminal offence against the laws of both countries.	22. Darse al Tráfico de Esclavos, si fuese con violacion de las leyes de ámbos paises.
Accessories.	The extradition is also to take place for participation in any of the aforesaid crimes as an accessory before or after the fact, provided such participation be punishable by the laws of both Contracting Parties.	
Subjects.	III.—No Salvadorian shall be delivered up by the Government of Salvador to the Government of the United Kingdom, and no subject of the United Kingdom shall be delivered up by the Government thereof to the Government of Salvador.	
No extradition if person has been or is being tried.	IV.—The extradition shall not take place if the person claimed on the part of the Government of the United Kingdom, or the person claimed on the part of the Government of Salvador, has already been tried and discharged or punished, or is still under trial in the territory of Salvador or in the United Kingdom respectively for the crime for which his extradition is demanded.	
Trial for another offence pending, surrender postponed.	If the person claimed on the part of the Government of the United Kingdom, or on the part of the Government of Salvador, should be under examination for any other crime in the territory of Salvador or in the United Kingdom respectively, his extradition shall be deferred until the conclusion of the trial and the full execution of any punishment awarded to him.	

V.—The extradition shall not take place if, subsequently to the commission of the crime, or the institution of the penal prosecution or the conviction thereon, exemption from prosecution or punishment has been acquired by lapse of time, according to the laws of the State applied to. Salvador.
No extradition if offence prescribed.

VI.—A fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded is one of a political character, or if he prove that the requisition for his surrender has, in fact, been made with a view to try or punish him for an offence of a political character. Political offences.

VII.—A person surrendered can in no case be kept in prison or be brought to trial in the State to which the surrender has been made, for any other crime, or on account of any other matters, than those for which the extradition shall have taken place. This stipulation does not apply to crimes committed after the extradition. Trial after surrender to be limited to extradition offence.

VIII.—The requisition for extradition shall be made through the Diplomatic Agents of the High Contracting Parties respectively. Requisitions.

The requisition for the extradition of an accused person must be accompanied by a warrant of arrest issued by the competent authority of the State requiring the extradition, and by such evidence as, according to the laws of the place where the accused is found, would justify his arrest if the crime had been committed there. Arrest to be justified by law of extraditing State;

If the requisition relates to a person already convicted, it must be accompanied by the sentence of condemnation passed against the convicted person by the competent Court of the State that makes the requisition for extradition. evidence of conviction.

A requisition cannot be founded solely on sentences passed *in contumaciam*, but persons convicted for contumacy shall be deemed to be accused persons.

IX.—If the requisition for extradition be in accordance with the foregoing stipulations, the competent authorities of the State applied to shall proceed to the arrest of the fugitive. Arrest.

The prisoner is then to be brought before a competent Magistrate, who is to examine him, and to conduct the preliminary investigation of the case, just as if the apprehension had taken place for a crime committed in the same country.

X.—A fugitive criminal may be apprehended under a warrant issued by any Police Magistrate, Justice of the Peace, or other competent authority in either country, on such information or Procedure by warrant.

- Salvador. complaint, and such evidence, or after such proceedings, as would, in the opinion of the authority issuing the warrant, justify the issue of a warrant if the crime had been committed or the person convicted in that part of the dominions of the two Contracting Parties in which the Magistrate, Justice of the Peace, or other competent authority exercises jurisdiction; provided, however, that in the United Kingdom the accused shall, in such case, be sent as speedily as possible before a Police Magistrate in London. He shall, in accordance with this Article, be discharged, as well in Salvador as in the United Kingdom, if within the term of 30 days a requisition for extradition shall not have been made by the Diplomatic Agent of his country in accordance with the stipulations of this Treaty.
- Delay for presenting requisition.
- High sea offences. The same rule shall apply to the cases of persons accused or convicted of any of the crimes or offences specified in this Treaty, and committed on the high seas on board any vessel of either country which may come into a port of the other.
- Evidence to justify committal for trial in extraditing State. XI.—The extradition shall take place only if the evidence be found sufficient, according to the laws of the State applied to, either to justify the committal of the prisoner for trial, in case the crime had been committed in the territory of the said State, or to prove that the prisoner is the identical person convicted by the Courts of the State which makes the requisition, and no criminal shall be surrendered until after the expiration of 15 days from the date of his committal to prison to await the warrant for his surrender.
- Evidence taken in claiming State to be admitted. XII.—In the examinations which they have to make in accordance with the foregoing stipulations, the authorities of the State applied to shall admit as entirely valid evidence the sworn depositions or statements of witnesses taken in the other State, or copies thereof, and likewise the warrants and sentences issued therein, provided such documents are signed or certified by a Judge, Magistrate, or officer of such State, and are authenticated by the oath of some witness, or by being sealed with the official seal of the Minister of Justice, or some other Minister of State.
- Claims by several States. XIII.—If the individual claimed by one of the two High Contracting Parties in pursuance of the present Treaty should be also claimed by one or several other Powers, on account of other crimes or offences committed upon their respective territories, his extradition shall be granted to that State whose demand is earliest in date; unless any other arrangement should have been

made between the different Governments to determine the preference, either on account of the gravity of the crime or offence, or for any other reason. Salvador.

XIV.—If sufficient evidence for the extradition be not produced within 2 months from the date of the apprehension of the fugitive, he shall be set at liberty. Delay for presenting evidence.

XV.—All articles seized, which were in the possession of the person to be surrendered at the time of his apprehension shall, if the competent authority of the State applied to for the extradition has ordered the delivery of such articles, be given up when the extradition takes place; and the said delivery shall extend, not merely to the stolen articles, but to everything that may serve as a proof of the crime. Articles seized.

XVI.—The High Contracting Parties renounce any claim for the reimbursement of the expenses incurred by them in the arrest and maintenance of the person to be surrendered and his conveyance till placed on board ship; they reciprocally agree to bear such expenses themselves. Expenses.

XVII.—The stipulations of the present Treaty shall be applicable to the Colonies and foreign possessions of Her Britannic Majesty.

The requisition for the surrender of a fugitive criminal who has taken refuge in any of such Colonies or foreign possessions, shall be made to the Governor or chief authority of such Colony or possession by the chief Consular Officer of the Republic of Salvador in such Colony or possession. Extradition from British Colonies.

Such requisition may be disposed of, subject always, as nearly as may be, to the provisions of this Treaty, by the said Governor or chief authority, who, however, shall be at liberty either to grant the surrender or to refer the matter to his Government.

Her Britannic Majesty shall, however, be at liberty to make special arrangements in the British Colonies and foreign possessions for the surrender of Salvadorian criminals who may take refuge within such Colonies and foreign possessions, on the basis, as nearly as may be, of the provisions of the present Treaty.

Requisitions for the surrender of a fugitive criminal emanating from any Colony or foreign possession of Her Britannic Majesty shall be governed by the rules laid down in the preceding Articles of the present Treaty. Extradition by British Colonies.

XVIII.—The present Treaty shall come into force 10 days after its publication, in conformity with the forms prescribed by the laws of the High Contracting Parties. It may be terminated

Salvador. by either of the High Contracting Parties, but shall remain in force for 6 months after notice has been given for its termination.

The Treaty, after receiving the approval of the Congress of Salvador, shall be ratified and the ratifications shall be exchanged at London as soon as possible.

SAN MARINO.

[Treaty, 16th October, 1899. O. in C. 3rd March, 1900.
Acts in force from 19th March, 1900.]

Agreement to
extradite.

I.—The High Contracting Parties engage to deliver up to each other those persons who, being accused or convicted of a crime or offence committed in the territory of the one Party, shall be found within the territory of the other Party, under the circumstances and conditions stated in the present Treaty.

Extradition
offences.

II.—The crimes or offences for which the extradition is to be granted are the following:—

1. Murder, or attempt, or conspiracy to murder, and manslaughter.

1. Omicidio volontario di qualunque grado e denominazione punibile secondo la legge di San Marino, tentativo, complicità, o cospirazione nel medesimo reato.

2. Assault occasioning actual bodily harm. Malicious wounding or inflicting grievous bodily harm.

2. Ferite o percosse volontarie, producenti gravi lesioni corporali secondo il Codice Penale di San Marino.

3. Counterfeiting or altering money, or uttering counterfeit or altered money.

3. Contraffazione o alterazione di moneta od emissione di moneta contraffatta o alterata.

4. Knowingly making any instrument, tool, or engine adapted and intended for counterfeiting coin.

4. Scienze fabbricazione di qualsiasi strumento, ordigno od apparecchio adatto e destinato per la contraffazione di moneta.

5. Forgery, counterfeiting, or altering or uttering what is forged, counterfeited or altered.

5. Falsificazione, contraffazione o alterazione od emissione della cosa falsificata, contraffatta o alterata.

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| <p>6. Embezzlement or larceny.</p> <p>7. Malicious injury to property if the offence be indictable.</p> <p>8. Obtaining money, goods, or valuable securities by false pretences.</p> <p>9. Receiving money, valuable security, or other property knowing the same to have been stolen, embezzled, or unlawfully obtained.</p> <p>10. Crimes against bankruptcy law.</p> <p>11. Fraud by a bailee, banker, agent, factor, trustee, or director, or member or public officer of any company.</p> <p>12. Perjury, or subornation of perjury.</p> <p>13. Rape.</p> <p>14. Carnal knowledge, or any attempt to have carnal knowledge, of a girl under 16 years of age, so far as such acts are punishable by the law of the State upon which the demand is made.</p> <p>15. Indecent assault. Indecent assault, even with consent, upon children of either sex under 13 years of age.</p> <p>16. Administering drugs or using instruments with intent to procure the miscarriage of a woman.</p> <p>17. Abduction.</p> | <p>6. Furto od indebita sottrazione od appropriazione. <u>San Marino.</u></p> <p>7. Danni dolosi alla proprietà quando il reato è oggetto di procedimento formale.</p> <p>8. L'ottenuta consegna di denaro, oggetti o valori col mezzo di raggio.</p> <p>9. Ricettazione di denaro, valori od altro di nota provenienza furtiva.</p> <p>10. Bancarotta dolosa.</p> <p>11. Frode commessa da un depositario, banchiere, agente, amministratore, curatore, o direttore, o membro o pubblico ufficiale di qualsiasi compagnia.</p> <p>12. Spergiuro o subornazione allo spergiuro.</p> <p>13. Violenza carnale.</p> <p>14. Commercio carnale o tentativo di commercio carnale con una minore degli anni sedici, in quanto tali atti siano punibili dalla legge dello Stato richiesto.</p> <p>15. Attentato al pudore con qualsiasi violenza. Qualunque altro attentato al pudore su persone dell'uno o dell'altro sesso (anche con loro consenso) quando siano di età inferiore ai tredici anni.</p> <p>16. Sommistrazione di medicinali od uso di strumenti allo scopo di procurare l'aborto ad una donna.</p> <p>17. Rapimento di persona.</p> |
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<u>San Marino.</u>	<p>18. Child-stealing.</p> <p>19. Abandoning children, exposing or unlawfully detaining them.</p> <p>20. Kidnapping and false imprisonment.</p> <p>21. Burglary or house-breaking.</p> <p>22. Arson.</p> <p>23. Robbery with violence.</p> <p>24. Any malicious act done with intent to endanger the safety of any person in a railway train.</p> <p>25. Threats by letter or otherwise, with intent to extort.</p> <p>26. Piracy by [the] law of nations.</p> <p>27. Sinking or destroying a vessel at sea, or attempting or conspiring to do so.</p> <p>28. Assaults on board a ship on the high seas with intent to destroy life or to do grievous bodily harm.</p> <p>29. Revolt, or conspiracy to revolt, by two or more persons on board a ship on the high seas against the authority of the master.</p> <p>30. Dealing in slaves in such a manner as to constitute a</p>	<p>18. Sottrazione di fanciulli.</p> <p>19. Abbandono, esposizione, od abusiva detenzione di fanciulli.</p> <p>20. Sottrazione ed abusivo sequestro di persona.</p> <p>21. <i>Burglary e house-breaking</i>, comprendendosi sotto queste designazioni l'atto di chi di notte tempo, o anche di giorno, si introduce mediante rottura o scalata, o per mezzo di chiave falsa od altro strumento, nell'altrui abitazione per commettere un reato.</p> <p>22. Incendi dolosi.</p> <p>23. Furto con violenza.</p> <p>24. Qualsiasi atto doloso commesso con l'intento di mettere in pericolo l'incolumità di qualunque persona in un convoglio ferroviario.</p> <p>25. Minacce per lettera o per altro modo, all'intento di estorsione.</p> <p>26. Pirateria, secondo il diritto internazionale.</p> <p>27. Sommersione o distruzione di nave in mare, o tentativo ovvero cospirazione a tale oggetto.</p> <p>28. Assalto a bordo di una nave in alto mare col fine di uccidere o di produrre gravi danni corporali.</p> <p>29. Rivolta o cospirazione di rivolta di due o più persone a bordo di una nave in alto mare contro l'autorità del capitano.</p> <p>30. Commercio di schiavi in maniera tale da costituire reato</p>
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criminal offence against the *contro le leggi di entrambi gli Stati.* San Marino.
laws of both State.

Extradition is also to be granted for participation in any of the aforesaid crimes, provided such participation be punishable by the laws of both the Contracting Parties. Accessories.

Extradition may also be granted, at the discretion of the State applied to, in respect of any other crime for which, according to the laws of both the Contracting Parties for the time being in force, the grant can be made. Other offences.

III.—Either Government may, in its absolute discretion, refuse to deliver up its own subjects to the other Government. Subjects.

IV.—The extradition shall not take place if the person claimed on the part of the British Government, or the person claimed on the part of the Government of San Marino, has already been tried and discharged or punished, or is actually upon his trial, within the territory of the other of the two High Contracting Parties, for the crime for which his extradition is demanded. No extradition if person has been or is being tried.

If the person claimed on the part of the British Government, or if the person claimed on the part of the Government of San Marino, should be under examination, or be undergoing sentence under a conviction, for any other crime within the territories of two High Contracting Parties respectively, his extradition shall be deferred until after he has been discharged, whether by acquittal or on expiration of his sentence, or otherwise. Trial for another offence pending, surrender postponed.

V.—The extradition shall not take place if, subsequently to the commission of the crime, or the institution of the penal prosecution or the conviction thereon, exemption from prosecution or punishment has been acquired by lapse of time, according to the laws of the State applied to. No extradition if offence prescribed.

VI.—A fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded is one of a political character, or if he prove that the requisition for his surrender has in fact been made with a view to try or punish him for an offence of a political character. Political offences.

VII.—A person surrendered can in no case be kept in prison, or be brought to trial in the State to which the surrender has been made, for any other crime, or on account of any other matters, than those for which the extradition shall have taken place, until he has been restored or had an opportunity of returning to the State by which he has been surrendered. Trial after extradition to be limited to extradition offence.

This stipulation does not apply to crimes committed after the extradition.

San Marino.	VIII.—The requisition for extradition shall be made in the following manner:—
Requisitions.	Applications on behalf of Her Britannic Majesty's Government for the surrender of a fugitive criminal in San Marino shall be made by Her Majesty's Consul for the Republic of San Marino. Application on behalf of the Republic of San Marino for the surrender of a fugitive criminal in the United Kingdom shall be made either direct by the Captains-Regent or by the Consul of the Republic accredited to the British Government in London.
Arrest to be justified by law of extraditing State.	The requisition for the extradition of an accused person must be accompanied by a warrant of arrest issued by the competent authority of the State requiring the extradition, and by such evidence as, according to the laws of the place where the accused is found, would justify his arrest if the crime had been committed there.
Evidence of conviction.	If the requisition relates to a person already convicted, it must be accompanied by the sentence of condemnation passed against the convicted person by the competent Court of the State that makes the requisition for extradition. A sentence passed <i>in contumaciam</i> is not to be deemed a conviction, but a person so sentenced may be dealt with as an accused person.
Arrest.	IX.—If the requisition for extradition be in accordance with the foregoing stipulations, the competent authorities of the State applied to shall proceed to the arrest of the fugitive.
Procedure in British dominions.	X.—If the fugitive has been arrested in the British dominions, he shall forthwith be brought before a competent Magistrate, who is to examine him and to conduct the preliminary investigation of the case, just as if the apprehension had taken place for a crime committed in the British dominions.
Evidence taken in San Marino to be admitted.	In the examinations which they have to make in accordance with the foregoing stipulations, the authorities of the British dominions shall admit as valid evidence the sworn depositions or the affirmations of witnesses taken in San Marino, or copies thereof, and likewise the warrants and sentences issued therein, and certificates of, or judicial documents stating the fact of, a conviction, provided the same are authenticated as follows:—
Authentication of documents.	1. A warrant must purport to be signed by a Judge, Magistrate, or officer of the Republic of San Marino. 2. Depositions or affirmations, or the copies thereof, must purport to be certified under the hand of a Judge, Magistrate, or officer of the Republic of San Marino, to be the original

depositions or affirmations, or to be true copies thereof, as the case may require. San Marino.

3. A certificate of or judicial document stating the fact of a conviction must purport to be certified by a Judge, Magistrate, or officer of the Republic of San Marino.

4. In every case such warrant, deposition, affirmation, copy, certificate, or judicial document must be authenticated either by the oath of some witness, or by being sealed with the official seal and legalization of the Republic of San Marino; but any other mode of authentication for the time being permitted by the law in that part of the British dominions where the examination is taken may be substituted for the foregoing.

XI.—If the fugitive has been arrested in the Republic of San Marino, his surrender shall be granted if, upon examination by a competent authority, it appears that the documents furnished by the British Government contain sufficient *prima facie* evidence to justify the extradition. Procedure in
San Marino.

The authorities of the Republic shall admit as valid evidence records drawn up by the British authorities of the depositions of witnesses, or copies thereof, and records of conviction or other judicial documents, or copies thereof: Provided that the said documents be signed or authenticated by an authority whose competence shall be certified by the seal of a Minister of State of Her Britannic Majesty. British evidence
to be admitted.

XII.—The extradition shall not take place unless the evidence be found sufficient, according to the laws of the State applied to, either to justify the committal of the prisoner for trial, in case the crime had been committed in the territory of the said State, or to prove that the prisoner is the identical person convicted by the Courts of the State which makes the requisition, and that the crime of which he has been convicted is one in respect of which extradition could, at the time of such conviction, have been granted by the State applied to. In Her Britannic Majesty's dominions the fugitive criminal shall not be surrendered until the expiration of 15 days from the date of his being committed to prison to await his surrender. Evidence to
justify committal
for trial in
extraditing State.

XIII.—If the individual claimed by one of the two High Contracting Parties, in pursuance of the present Treaty, should be also claimed by one or several other Powers, on account of other crimes or offences committed upon their respective territories, his extradition shall be granted to the State whose demand is earliest in date. Claims by
several States.

- San Marino.** XIV.—If sufficient evidence for the extradition be not produced within 2 months from the date of the apprehension of the fugitive, or within such further time as the State applied to, or the proper tribunal thereof, shall direct, the fugitive shall be set at liberty.
- Delay for presenting evidence.**
- Articles seized.** XV.—All articles seized which were in the possession of the person to be surrendered, at the time of his apprehension, shall, if the competent authority of the State applied to for the extradition has ordered the delivery thereof, be given up when the extradition takes place, and the said delivery shall extend not merely to the stolen articles, but to everything that may serve as a proof of the crime.
- Expenses.** XVI.—The expenses of arresting, maintaining, and transporting the person whose extradition is applied for, as well as those of handing over and transporting the property and articles, which, by the preceding Article, must be restored or given up, shall be borne by the two States within the limits of their respective territories.
- The expenses of transport or other necessary expenses by sea or through the territories of a third State shall be borne by the demanding State.
- Transit through third State.** XVII.—Either of the High Contracting Parties who may wish to have recourse for purposes of extradition to transit through the territory of a third Power shall be bound to arrange the condition of transit with such third Power.
- Each State to take evidence for the other.** XVIII.—When in a criminal case of a non-political character either of the High Contracting Parties should think it necessary to take the evidence of witnesses residing in the dominions of the other, or to obtain any other legal evidence, a “Commission Rogatoire” to that effect shall be sent through the channel indicated in Article VIII, and effect shall be given thereto conformably to the laws in force in the place where the evidence is to be taken.
- Extradition by British Colonies.** XIX.—The stipulations of the present Treaty shall be applicable to the Colonies and foreign possessions of Her Britannic Majesty, so far as the laws for the time being in force in such Colonies and foreign possessions respectively will allow.
- The requisition for the surrender of a fugitive criminal who has taken refuge in any of such Colonies or foreign possessions may be made to the Governor or chief authority of such Colony or possession by any person authorised to act in such Colony or possession as a Consular Officer of the Republic of San Marino.

Such requisitions may be disposed of, subject always, as nearly as may be, and so far as the law of such Colony or foreign possession will allow, to the provisions of this Treaty, by the said Governor or chief authority, who, however, shall be at liberty either to grant the surrender or to refer the matter to his Government. San Marino.

Her Britannic Majesty shall, however, be at liberty to make special arrangements in the British Colonies and foreign possessions for the surrender of criminals from San Marino who may take refuge within such Colonies and foreign possessions, on the basis, as nearly as may be, and so far as the law of such Colony or foreign possession will allow, of the provisions of the present Treaty.

Requisitions for the surrender of a fugitive criminal emanating from any Colony or foreign possession of Her Britannic Majesty shall be governed by the rules laid down in the preceding Articles of the present Treaty. Extradition to
British Colonies

XX.—The present Treaty shall come into force 10 days after its publication, in conformity with the forms prescribed by the laws of the High Contracting Parties. It may be terminated by either of the High Contracting Parties, at any time on giving to the other 6 months of its intention to do so.

The Treaty shall be ratified, and the ratifications shall be exchanged at Rome as soon as possible.

SERVIA.

[Treaty, 6th December, 1900. O. in C. 15th June, 1901.
Acts in force from 13th August, 1901.]

I.—The High Contracting Parties engage to deliver up to each other those persons who, being accused or convicted of a crime or offence committed in the territory of the one Party, shall be found within the territory of the other Party, under the circumstances and conditions stated in the present Treaty. Agreement to
extradite.

II.—The crimes or offences for which the extradition is to be granted are the followings:— Extradition
offences.

1. Murder, or attempt, or conspiracy to murder.

§ The treaty is in Servian as well as English, but the characters are unfortunately not available in the Colony.

Servia.

2. Manslaughter.
3. Assault occasioning actual bodily harm. Maliciously wounding or inflicting grievous bodily harm.
4. Counterfeiting or altering money, or uttering counterfeit or altered money.
5. Knowingly making any instrument, tool, or engine adapted and intended for counterfeiting coin.
4. Forgery, counterfeiting, or altering or uttering what is forged, or counterfeited, or altered.
7. Embezzlement or larceny.
8. Malicious injury to property, by explosives or otherwise, if the offence be indictable.
9. Obtaining money, goods, or valuable securities by false pretences.
10. Receiving money, valuable security, or other property, knowing the same to have been stolen, embezzled or unlawfully obtained.
11. Crimes against bankruptcy law.
12. Fraud by a bailee, banker, agent, factor, trustee, or director, or member, or public officer of any company, made criminal by any law for the time being in force.
13. Perjury, or subornation of perjury.
14. Rape.
15. Carnal knowledge, or any attempt to have carnal knowledge, of a girl under 14 years of age.
16. Indecent assault.
17. Procuring miscarriage, administering drugs, or using instruments with intent to procure the miscarriage of a woman.
18. Abduction.
19. Child-stealing.
20. Abandoning children, exposing or unlawfully detaining them.
21. Kidnapping and false imprisonment.
22. Burglary or house-breaking.
23. Arson.
24. Robbery with violence.
25. Any malicious act done with intent to endanger the safety of any person in a railway train.
26. Threats by letter or otherwise, with intent to extort.
27. Piracy by [the] law of nations.
28. Sinking or destroying a vessel at sea, or attempting or conspiring to do so.

29. Assaults on board a ship on the high seas, with intent to destroy life, or do grievous bodily harm. Serbia.

30. Revolt, or conspiracy to revolt, by two or more persons on board a ship on the high seas against the authority of the master.

31. Dealing in slaves.

Extradition is also to be granted for participation in any of the aforesaid crimes, provided such participation be punishable by the laws of both the Contracting Parties. Accessories.

III.—Either Government may, in its absolute discretion, refuse to surrender its own subjects to the other Government. Subjects.

IV.—The extradition shall not take place if the person claimed has already been tried and discharged or punished, or is still under trial, within the territories of the two High Contracting Parties respectively, for the crime for which his extradition is demanded. No extradition if person has been or is being tried.

If the person claimed should be under examination, or is undergoing sentence under a conviction, for any other crime within the territories of the two High Contracting Parties respectively, his extradition shall be deferred until after he has been discharged, whether by acquittal or on expiration of his sentence, or otherwise. Trial for another offence pending, surrender postponed.

V.—The extradition shall not take place if, subsequently to the commission of the crime, or the institution of the penal prosecution, or the conviction thereon, exemption from prosecution or punishment has been acquired by lapse of time, according to the laws of the State applied to. No extradition if offence prescribed.

VI.—A fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded is one of a political character, or if he prove that the requisition for his surrender has in fact been made with a view to try or punish him for an offence of a political character. Political offences.

VII.—A person surrendered can in no case be kept in prison, or be brought to trial in the State to which the surrender has been made, for any other crime or on account of any other matters than those for which the extradition shall have taken place, until he has been restored or had an opportunity of returning to the State by which he has been surrendered. Trial after surrender to be limited to extradition offence.

This stipulation does not apply to crimes committed after the extradition.

VIII.—The requisition for extradition shall be made through the Diplomatic Agents of the High Contracting Parties respectively. Requisitions.

<p>Servia.</p> <hr/> <p>Arrest to be justified by law of extraditing State;</p> <p>evidence of conviction.</p>	<p>The requisition for the extradition of an accused person must be accompanied by a warrant of arrest issued by the competent authority of the State requiring the extradition, and by such evidence as, according to the laws of the place where the accused is found, would justify his arrest if the crime had been committed there.</p> <p>If the requisition relates to a person already convicted, it must be accompanied by the sentence of condemnation passed against the convicted person by the competent Court of the State that makes the requisition for extradition.</p> <p>A sentence passed <i>in contumaciam</i> is not to be deemed a conviction, but a person so sentenced may be dealt with as an accused person.</p>
<p>Arrest.</p> <p>Procedure in British dominions.</p>	<p>IX.—If the requisition for extradition be in accordance with the foregoing stipulations, the competent authorities of the State applied to shall proceed to the arrest of the fugitive.</p> <p>X.—If the fugitive has been arrested in the British dominions, he shall forthwith be brought before a competent Magistrate, who is to examine him, and to conduct the preliminary investigation of the case, just as if the apprehension had taken place for a crime committed in the British dominions.</p>
<p>Evidence taken in Servia to be received.</p>	<p>In the examinations which they have to make in accordance with the foregoing stipulations, the authorities of the British dominions shall admit as valid evidence the sworn depositions or the affirmations of witnesses taken in Servia, or copies thereof, and likewise the warrants and sentences issued therein, and certificates of, or judicial documents stating the fact of, a conviction, provided the same are authenticated as follows:—</p>
<p>Authentication of documents.</p>	<ol style="list-style-type: none"> 1. A warrant must purport to be signed by a Judge, Magistrate, or Judicial Officer of Police of Servia. 2. Depositions or affirmations, or the copies thereof, must purport to be certified under the hand of a Judge, Magistrate, or Judicial Officer of Police of Servia, to be the original depositions or affirmations, or to be the true copies thereof, as the case may require. 3. A certificate of or judicial document stating the fact of a conviction must purport to be certified by a Judge, Magistrate, or Judicial Officer of Police of Servia. 4. In every case such warrant, deposition, affirmation, copy, certificate, or judicial document must be authenticated either by the oath of some witness, or by being sealed with the official seal of the Minister of Justice or of Foreign Affairs of Servia;

but any other mode of authentication for the time being permitted by the law in that part of the British dominions where the examination is taken, may be substituted for the foregoing. Serbia.

XI.—On the part of the Servian Government, the extradition shall take place as follows in Serbia:— Procedure in
Serbia.

The Minister, or other Diplomatic Agent of Her Britannic Majesty in Serbia, shall send to the Minister for Foreign Affairs, in support of each demand for extradition, an authentic and duly legalised copy either of a certificate of condemnation, or of a warrant of arrest against an incriminated or accused person, clearly shewing the nature of the crime or offence on account of which proceedings are being taken against the fugitive. The judicial document so produced shall be accompanied by a description and other particulars serving to establish the identity of the person whose extradition is claimed.

In case the documents produced by the British Government to establish the identity, and the particulars gathered by the Roumanian police authorities for the same purpose, should be deemed to be insufficient, notice thereof shall forthwith be given to the Minister or other Diplomatic Agent of Her Britannic Majesty in Serbia, and the individual whose extradition is desired, if he has been arrested, shall remain in detention until the British Government has produced new elements of proof to establish his identity, or to clear up any other difficulties arising in the examination.

XII.—The extradition shall not take place unless the evidence be found sufficient according to the laws of the State applied to, either to justify the committal of the prisoner for trial, in case the crime had been committed in the territory of the said State, or to prove that the prisoner is the identical person convicted by the Courts of the State which makes the requisition, and that the crime of which he has been convicted is one in respect of which extradition could, at the time of such conviction, have been granted by the State applied to. In Her Britannic Majesty's dominions the fugitive criminal shall not be surrendered until the expiration of 15 days from the date of his being committed to prison to await his surrender. Evidence to
justify committal
for trial in
extraditing State.

XIII.—If the individual claimed by one of the two High Contracting Parties in pursuance of the present Treaty should be also claimed by one or several other Powers, on account of other crimes or offences committed upon their respective territories, Claims by
several States.

- Servia.** his extradition shall be granted to that State whose demand is earliest in date.
- Delay for presenting evidence.** XIV.—If sufficient evidence for the extradition be not produced within 2 months from the date of the apprehension of the fugitive, or within such further time as the State applied to, or the proper tribunal thereof shall direct, the fugitive shall be set at liberty.
- Articles seized.** XV.—All articles seized which were in the possession of the person to be surrendered at the time of his apprehension, shall, if the competent authority of the State applied to for the extradition has ordered the delivery thereof, be given up when the extradition takes place, and the said delivery shall extend not merely to the stolen articles, but to everything that may serve as a proof of the crime.
- Expenses.** XVI.—All expenses connected with extradition shall be borne by the demanding State.
- XVII.—The stipulations of the present Treaty shall be applicable to the Colonies and foreign possessions of Her Britannic Majesty, so far as the laws for the time being in force in such Colonies and foreign possessions respectively will allow.
- Extradition from British Colonies.** The requisition for the surrender of a fugitive criminal, who has taken refuge in any of such Colonies or foreign possessions may be made to the Governor or chief authority of such Colony or possession by any person authorised to act in such Colony or possession as a Consular Officer of Servia.
- Such requisitions may be disposed of, subject always, as nearly as may be, and so far as the law of such Colony or foreign possession will allow, to the provisions of this Treaty, by the said Governor or chief authority, who, however, shall be at liberty either to grant the surrender or to refer the matter to his Government.
- Her Britannic Majesty shall, however, be at liberty to make special arrangements in the British Colonies and foreign possessions for the surrender of criminals from Servia who may take refuge within such Colonies and foreign possessions, on the basis, as nearly as may be, and so far as the law of such Colony or foreign possession will allow, of the provisions of the present Treaty.
- Extradition to British Colonies.** Requisitions for the surrender of a fugitive criminal emanating from any Colony or foreign possession of Her Britannic Majesty shall be governed by the rules laid down in the preceding Articles of the present Treaty.

XVIII.—The present Treaty shall come into force 10 days after its publication, in conformity with the forms prescribed by the laws of the High Contracting Parties. It may be terminated by either of the High Contracting Parties at any time on giving to the other 6 months' notice of its intention to do so.

Servia.

The Treaty shall be ratified, and the ratifications shall be exchanged at Belgrade as soon as possible.

SPAIN.

[Treaty, 4th June, 1878. O. in C. 27th November, 1878.
Supplementary Declaration, 19th February, 1889.
Acts in force from 9th December, 1878.]

I.—Her Majesty the Queen of the United Kingdom of Great Britain and Ireland engages to deliver up, under the circumstances and on the conditions stipulated in the present Treaty, all persons, and His Majesty the King of Spain engages to deliver up, under the like circumstances and conditions, all persons, excepting his own subjects, who, having been charged with, or convicted by the tribunals of one of the two High Contracting Parties of the crimes or offences enumerated in Article II, committed in the territory of the one Party, and who shall be found within the territory of the other.

Agreement to extradite.

II.—The extradition shall be reciprocally granted for the following crimes or offences:—

Extradition offences.

1. Murder (including assassination, parricide, infanticide, poisoning, or attempt to murder).

1. Asesinato, parricidio, infanticidio envenenamiento, ó tentativa de asesinato.

2. Manslaughter.

2. Homicidio.

3. Administering drugs or using instruments with intent to procure the miscarriage of women.

3. Aborto.

4. Rape.

4. Violacion.

5. Unlawful carnal knowledge, or any attempt to have unlawful carnal knowledge of a girl under

5. Comercio carnal ilícito ó tentativa del mismo delito en la persona de una jóren menor de diez

Supplementary Declaration, 19th Feb. 1889.

Spain.

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| <p>16 years of age. Indecent assault.</p> <p>6. Kidnapping and false imprisonment, child-stealing, abandoning, exposing, or unlawfully detaining children.</p> <p>7. Abduction of minors.</p> <p>8. Bigamy.</p> <p>9. Wounding or inflicting grievous bodily harm.</p> <p>10. Assaulting a magistrate, or peace or public officer.</p> <p>11. Threats by letter or otherwise with intent to extort money or other things of value.</p> <p>12. Perjury or subornation of perjury.</p> <p>13. Arson.</p> <p>14. Burglary or house-breaking, robbery with violence, larceny or embezzlement.</p> <p>15. Fraud by a bailee, banker, agent, factor, trustee, director, member, or public officer of any company made criminal by any law for the time being in force.</p> <p>16. Obtaining money, valuable security, or goods by false pretences; receiving any money, valuable security, or other property, knowing the same to have been unlawfully obtained.</p> <p>17.—(a) Counterfeiting or altering money, or bringing into circulation counterfeited or altered money.</p> | <p>y seis años de edad. Atentado contra el pudor.</p> <p>6. Secuestro, robo, abandono, exposicion, ó retencion ilegal de niños.</p> <p>7. Sustraccion de menores.</p> <p>8. Bigamia.</p> <p>9. Heridas ó lesiones corporales graves.</p> <p>10. Desacato ó violencia contra autoridades, magistrados, ó funcionarios públicos.</p> <p>11. Amenazas verbales ó escritas con intencion de robar dinero ó valores.</p> <p>12. Falso testimonio y soborno de testigos, peritos, ó intérpretes.</p> <p>13. Incendio voluntario.</p> <p>14. Hurto y robo.</p> <p>15. Abuso de confianza ó defraudacion por un banquero, comisionista, administrador, tutor, curador, liquidador, síndico, funcionario público, director, miembro ó empleado de una sociedad, ó por cualquiera otra persona.</p> <p>16. Estafa, ocultacion fraudulenta de dinero, valores ú objetos muebles, y adquisicion de los mismos con conocimiento de que han sido ilegalmente obtenidos.</p> <p>17.—(a) Fabricacion y expendicion de moneda falsa ó alterada.</p> |
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(b) Forgery, or counterfeiting or altering or uttering what is forged, counterfeited, or altered.

(c) Knowingly making without lawful authority any instrument, tool, or engine adapted and intended for the counterfeiting of coin of the realm.

18. Crimes against bankruptcy law.

19. Any malicious act done with intent to endanger persons in a railway train.

20. Malicious injury to property, if such offence be indictable.

21. Crimes committed at sea.

(a) Piracy by the law of nations.

(b) Sinking or destroying a vessel at sea, or attempting or conspiring to do so.

(c) Revolt or conspiracy to revolt by two or more persons on board a ship on the high seas against the authority of the master.

(d) Assault on board a ship on the high seas with intent to destroy life, or to do grievous bodily harm.

22. Dealing in slaves in such manner as to constitute an offence against the laws of both countries.

(b) Falsificacion de documentos ó empleo de los mismos; falsificacion de los sellos del Estado, punzones, timbres ó papel sellado, ó empleo de sellos, punzones, ó timbres falsificados.

(c) Fabricacion ilegal de instrumentos para la falsificacion del cuño de la moneda.

18. Quiebra fraudulenta.

19. Actos cometidos con intencion de poner en peligro la vida de los viajeros en un tren de camino de hierro.

20. Destruccion ó deterioro de cualquiera propiedad mueble ó inmueble penado por la ley.

21. Crímenes que se cometan en la mar:

(a) Pirateria.

(b) Destruccion ó pérdida de un buque causada intencionalmente, ó tentativa y conspiracion para dicho objeto.

(c) Rebelion ó conspiracion por dos ó mas personas para rebelarse á bordo de un buque contra la autoridad del capitán á bordo de un buque en alta mar.

(d) Actos cometidos con intencion de matar ó de causar daño material á personas á bordo de un buque en alta mar.

22. Trata de esclavos, con arreglo á las leyes de cada uno de ambos Estados respectivamente.

- Spain.** The extradition is also to take place for participation in any of the aforesaid crimes as an accessory before or after the fact, provided such participation be punishable by the laws of both Contracting Parties.
- Accessories.**
- Trial after extradition to be limited to extradition offence.** III.—The present Treaty shall apply to crimes and offences committed prior to the signature of the Treaty; but a person surrendered shall not be tried for any crime or offence committed in the other country before the extradition, other than the crime for which his surrender has been granted.
- Political offences.** IV.—No person shall be surrendered, if the offence in respect of which his surrender is demanded is one of a political character, or if he prove to the satisfaction of the competent authority of the State in which he is that the requisition for his surrender has in fact been made with a view to try or to punish him for an offence of a political character.
- Proceedings on requisitions in Spain.** V.—In the States of His Majesty the King of Spain, excepting the provinces or possessions beyond sea, the proceedings for demanding and obtaining the extradition shall be as follows:—
- The Diplomatic Representative of Great Britain shall send to the Minister for Foreign Affairs (*Ministro de Estado*) with the demand for extradition, an authenticated and legalized copy of the sentence or of the warrant of arrest against the person accused, clearly shewing the crime or offence for which proceedings are taken against the fugitive. This judicial document shall be accompanied, if possible, by a description of the person claimed, and any other information or particulars that may serve to identify him.
- These documents shall be communicated by the Minister for Foreign Affairs to the Minister of Grace and Justice, by whose Department, after examining the documents and finding that there is reason for the extradition, a Royal Order will be issued granting it, and directing the arrest of the person claimed and his delivery to the British authorities.
- In virtue of the said Royal Order the Minister of the Interior (*Ministro de la Gobernacion*) will adopt the fitting measures for the arrest of the fugitive, and when this has taken place, the person claimed shall be placed at the disposal of the Diplomatic Representative who has demanded his extradition, and he shall be taken to the part of the frontier or to the seaport where the Agent appointed for the purpose by Her Britannic Majesty's Government is ready to take charge of him.

In case the documents furnished by the said Government for the identification of the person claimed, or the information obtained by the Spanish authorities for the same purpose, should be considered insufficient, immediate notice thereof shall be given to the Diplomatic Representative of Great Britain, and the person under arrest shall be detained until the British Government shall have furnished fresh evidence to prove his identity or to clear up any other difficulty relative to the examination and decision of the affair.

Spain.

VI.—In the dominions of Her Britannic Majesty, other than the Colonies or foreign possessions of Her Majesty, the manner of proceeding in order to obtain and demand extradition shall be as follows:—

Proceedings on
requisitions in
the United
Kingdom.

(A) In the case of a person accused—The requisition for the surrender shall be made to Her Britannic Majesty's Principal Secretary of State for Foreign Affairs by the Diplomatic Agent of His Majesty the King of Spain. The said demand shall be accompanied by a warrant of arrest or other equivalent judicial document, issued by a Judge or Magistrate duly authorised to take cognizance of the acts charged against the accused in Spain, and duly authenticated depositions or statements taken on oath before such Judge or Magistrate, clearly setting forth the said acts, and containing a description of the person claimed, and any particulars which may serve to identify him.

Accused persons.

The said Principal Secretary of State shall transmit such documents to Her Britannic Majesty's Principal Secretary of State for the Home Department, who shall then, by order under his hand and seal, signify to some Police Magistrate in London that such requisition has been made, and require him, if there be due cause, to issue his warrant for the apprehension of the fugitive. On the receipt of such order from the Secretary of State, and on the production of such evidence as would, in the opinion of the Magistrate, justify the issue of the warrant if the crime had been committed in the United Kingdom, he shall issue his warrant accordingly.

When the person claimed shall have been apprehended, he shall be brought before the Magistrate who issued the warrant, or some other Police Magistrate in London. If the evidence to be then produced shall be such as to justify, according to the law of England, the committal for trial of the prisoner, if the crime of which he is accused had been committed in the United Kingdom, the Police Magistrate shall commit him to prison to await the

Spain.

warrant of the Secretary of State for his surrender; sending immediately to the Secretary of State a certificate of the committal and a report upon the case.

* [for alteration in Spanish text, see Supplementary Declaration, 19th Feb. 1889; p. 231].

After the expiration of a period* from the committal of the prisoner which shall never be less than 15 days, the Secretary of State shall, by order under his hand and seal, order the fugitive criminal to be surrendered to such person as may be duly authorised to receive him on the part of the Spanish Government.

Convicted persons.

(B) In the case of a person convicted—The course of proceeding shall be the same as above indicated, except that the warrant to be transmitted by the Diplomatic Representative of Spain in support of his requisition shall clearly set forth the crime or offence of which the person claimed has been convicted, and state the fact, place, and date of his conviction.

The evidence to be produced before the Police Magistrate shall be such as would, according to the law of England, prove that the prisoner was convicted of the crime charged.

(C) Persons convicted by judgment in default or *arrêt de contumace*, shall be, in the matter of extradition, considered as persons accused, and, as such, be surrendered.

Habeas corpus.

(D) After the Police Magistrate shall have committed the accused or convicted person to prison to await the order of a Secretary of State for his surrender, such person shall have the right to apply for a writ of *habeas corpus*; if he should so apply, his surrender must be deferred until after the decision of the Court upon the return to the writ, and even then can only take place if the decision is adverse to the applicant. In the latter case the Court may at once order his delivery to the person authorised to receive him, without the order of a Secretary of State for his surrender, or commit him to prison to await such order.

Evidence taken in claiming State to be admitted.

** [*sic*: read "fact"].

Authentication of documents.

VII.—Warrants, depositions, or statements on oath, issued or taken in the dominions of either of the two High Contracting Parties, and copies thereof, and certificates of or judicial documents stating the facts** of conviction, shall be received in evidence in proceedings in the dominions of the other, if purporting to be signed or certified by a Judge, Magistrate, or officer of the country where they were issued or taken, provided such warrants, depositions, statements, copies, certificates, and judicial documents are authenticated by the oath of some witness, or by being sealed with the official seal of the Minister of Justice or some other Minister of State.

VIII.—A fugitive criminal may be apprehended under a warrant issued by any Police Magistrate, Justice of the Peace,† or other competent authority in either country, on such information or complaint, and such evidence, or after such proceedings as would, in the opinion of the person issuing the warrant, justify the issue of a warrant if the crime had been committed or the prisoner convicted in that part of the dominions of the two Contracting Parties in which the Magistrate Justice of the Peace, or other competent authority exercises jurisdiction: provided, however, that, in the United Kingdom, the accused shall, in such case, be sent as speedily as possible before a Police Magistrate in London. He shall in accordance with this Article be discharged, as well in Spain as in the United Kingdom if within the term of 30 days a requisition shall not have been made for his surrender by the Diplomatic Agent of his country in accordance with the stipulations of this Treaty.

Spain.

Arrest on warrant, if justified by law of extraditing State.

The same rule shall apply to the cases of persons accused or convicted of any of the crimes specified in this Treaty, and committed on the high seas on board any vessel of either country which may come into a port of the other.

High sea offences.

IX.—If the fugitive criminal who has been committed to prison, be not surrendered and conveyed away within 2 months after such committal, or within 2 months after the decision of the Court upon the return to a writ of *habeas corpus* in the United Kingdom, he shall be discharged from custody, unless sufficient cause be shown to the contrary.

Delay for removal of prisoner.

X.—In the Provinces beyond sea, Colonies, and other Possessions beyond sea of the two High Contracting Parties, the manner of proceeding shall be as follows:—

Extradition by or to Colonies.

The requisition for extradition of the fugitive criminal who has taken refuge in an over-sea Province, Colony, or possession of either of the two Contracting Parties, shall be made to the Governor or chief authority of such Province, Colony, or possession by the chief Consular Officer of the other State in such Province, Colony, or possession; or, if the fugitive has escaped from an over-sea Province, Colony or possession of the State on whose behalf the extradition is demanded, by the Governor or chief authority of such Province, Colony, or possession.

In these cases the provisions of this Treaty shall be observed as far as possible by the respective Governors or chief authorities,

* [*cf.* note to French Treaty, p. 103].

† "Magistrado de Policia, Juéz de Paz," in the Spanish text.*

Spain.	who, however, shall be at liberty either to grant the extradition or to refer the decision of the matter to the Governments of their respective countries.
Representation of Governments in the Courts.	XI.—In cases where it may be necessary, the Spanish Government shall be represented at the English Courts by the Law Officers of the Crown, and the English Government in the Spanish Courts by the Public Prosecutor (<i>Ministerio Fiscal</i>). The respective Governments will give assistance to the Diplomatic Representatives who claim their intervention for the custody and security of the persons subject to extradition.
No extradition if person has been tried, or if offence prescribed.	XII.—The claim for extradition shall not be complied with if the individual claimed has been already tried for the same offence in the country whence the extradition is demanded, or if, since the commission of the acts charged, the accusation or the conviction, exemption from prosecution, or punishment has been acquired by lapse of time, according to the laws of that country.
Claims by several States.	XIII.—If the individual claimed by one of the two High Contracting Parties in pursuance of the present Treaty should be also claimed by one or several other Powers, on account of other crimes committed upon their respective territories, his extradition shall be granted to that State whose demand is earliest in date; unless any other arrangement should exist between the different Governments to determine the preference, either on account of the gravity of the crime or offence, or for any other reason.
Trial for another offence pending, surrender postponed.	XIV.—If the individual claimed should be under prosecution, or have been condemned for a crime or offence committed in the country where he may have taken refuge, his surrender may be deferred until he shall have been set at liberty in due course of law.
Pendency of civil proceedings.	In case he should be proceeded against or detained in such country, on account of obligations contracted towards private individuals, the extradition shall nevertheless take place.
Articles seized.	XV.—Every article found in the possession of the individual claimed at the time of his arrest, shall, if the competent authority so decide, be seized, in order to be delivered up with his person at the time when the extradition takes place. Such delivery shall not be limited to the property or articles obtained by stealing or by fraudulent bankruptcy, but shall extend to everything that may serve as proof of the crime or offence, and shall take place even when the extradition, after having been granted, cannot be carried out by reason of the escape or death of the individual claimed.

The rights of third parties with regard to the said property Spain.
or articles are nevertheless reserved.

XVI.—The High Contracting Parties renounce any claim for Expenses.
the reimbursement of the expenses incurred by them in the arrest
and maintenance of the person to be surrendered, and his con-
veyance as far as the frontier; they reciprocally agree to bear
such expenses themselves.

XVI.—The present Treaty shall be ratified and the ratifica-
tions shall be exchanged at London as soon as possible.

It shall come into operation 10 days after its publication, in
conformity with the laws of the respective countries, and each of
the Contracting Parties may at any time terminate the Treaty
on giving to the other 6 months' notice of its intention to do so.

Supplementary Declaration, 19th February, 1889.

I.—The English and Spanish texts of paragraph 5, Article II,
of the Extradition Treaty of the 4th June, 1878, are cancelled,
and the following text is substituted therefor—

Unlawful carnal knowledge or any attempt to have unlawful *of. p. 223.*
carnal knowledge of a girl under 16 years of age. Indecent
assault.

II.—The Spanish text of paragraph 5, Article VI of the afore-
said Treaty is amended by the substitution of the words 'no
menor' for the words "que no podrá exceder," so that the
Spanish text shall run, "A la terminacion de un plazo no
menor de quince dias desde que se ordenó la prision y sujecion
á juicio del preso," &c.

III.—The present Declaration shall come into force 10 days
after its publication in the manner prescribed by law in the
respective countries.

SWEDEN.

[Treaty, with Sweden and Norway, 26th June, 1873.

O. in C. 30th September, 1873. Acts in force from 17th October, 1873.

Agreement, with Sweden, 2nd July, 1907.

O. in C. 12th August, 1907.]

THE British and Norwegian Governments, who agree that Treaty with
Sweden and
Norway
continued as
to Sweden.
the Treaty signed at Stockholm on the 26th June, 1873,
between the United Kingdom of Great Britain and Ireland
and the Kingdoms of Sweden and Norway, for the mutual

Sweden.

[*cf. ante*,
NORWAY].

surrender of fugitive criminals shall remain in force between the United Kingdom of Great Britain and Ireland and the Kingdom of Sweden in so far as its provisions apply to the Kingdom of Sweden alone, and who deem it desirable to make certain additions to the said Treaty, have authorised the Undersigned to declare that the following additions should be made to the offences set out in Article II of the said Treaty for which, under the circumstances and conditions stated in the said Treaty extradition is to be granted:—

I.—The High Contracting Parties engage to deliver up to each other, those persons who, being accused or convicted of a crime committed in the territory of the one Party, shall be found within the territory of the other Party, under the circumstances and conditions stated in the present Treaty.

II.—The crimes for which the extradition is to be granted are the following:—

1. Murder (child murder and poisoning included) or attempt to murder.
2. Manslaughter.
3. Counterfeiting or altering money, uttering or bringing into circulation knowingly counterfeit or altered money.
4. Forgery or counterfeiting or altering or uttering what is forged, or counterfeited, or altered, comprehending the crimes designated in the Swedish and Norwegian Penal Codes as counterfeiting or falsification of paper money, bank notes or other securities, forgery or falsification of other public or private documents, likewise the uttering or bringing into circulation or wilfully using such counterfeited, forged, or falsified papers.
5. Embezzlement or larceny.
6. Obtaining money or goods by false pretences, except as regards Norway, cases in which the crime is not accompanied by aggravating circumstances according to the law of that country.
7. Crimes by bankrupts against bankruptcy law.
8. Fraud by a bailee, banker, agent, factor, trustee, or director, or member or public officer of any company, made criminal by any law for the time being in force.
9. Rape.
10. Abduction.
11. Child-stealing.
12. Burglary or house-breaking.

Sweden.

13. Arson.

14. Robbery with violence.

15. Threats by letter or otherwise with intent to extort, except as regards Norway, cases in which this crime is not punishable by the laws of that country.

16. Sinking or destroying a vessel at sea, or attempting to do so.

17. Assaults on board a ship on the high seas, with intent to destroy life or to do grievous bodily harm.

18. Revolt, or conspiracy to revolt, by two or more persons on board a ship on the high seas against the authority of the master; except, as regards Norway, conspiracy to revolt.

† 19. Perjury and subornation of perjury.

20. Receiving any money, valuable security, or other property, knowing the same to have been stolen or embezzled.

21. Malicious wounding or inflicting grievous bodily harm.

22. Unlawful carnal knowledge of a girl under the age of 15 years.

23. Bigamy.

24. Indecent assault.

25. Administering drugs or using instruments apt to procure the miscarriage of women, with intent to procure such miscarriage.

26. Any malicious act done with intent to endanger

‡ 19. Mened och anstiftan af mened. Supplementary Agreement, 2nd July, 1907.

20. Mottagande af penningar, värdepapper eller annan egendom med vetskap att det mottagna ätkommits genom stöld eller försnillning.

21. Uppsätlig grof misshandel.

22. Oloflig otukt med kvinna under 15 års ålder.

23. Tvegifte.

24. Kränkning af sedligheten föröfvad med användande af våld.

25. Användande, i uppsätt at döda eller fördriva foster, af invärtes eller utvärtes medel, som kan hafva sådan verkan.

26. Hvarje handling företagen i uppsät att ästad-

† The original Treaty is published in the "Statutory Rules and Orders" in English alone; but the Supplementary Agreements, with both Sweden and Norway, are bilingual.

‡ The "a" with a circular accent in the Swedish text is not available; I have therefore used this type, "ä," instead.

<u>Sweden.</u>	<p>the safety of any person travelling or being upon a railway.</p> <p>27. Knowingly making, without lawful authority, any instrument, tool, or engine adapted and intended for the counterfeiting of the coin of the realm.</p> <p>28. Malicious injury to property, if such offence be indictable.</p>	<p>komma fara för dens säkerhet, som reser eller eljest befinner sig å järnväg.</p> <p>27. Förfärdigande utan behörigt uppdrag af verktyg, form eller maskin, som kan och är afsedd att användas till förfalskning af rikets mynt, för såvidt gärningsmannen haft vetakap om afsikten med förfärdigandet.</p> <p>28. Uppsätligskadegörelse å egendom af beskaffenhet att därå kan följa svårare straff än fängelse.</p>
Accessories.	<p>The extradition is also to take place for participation in any of the aforesaid crimes, provided such participation be punishable by the laws of both the Contracting Parties.</p>	
Subjects.	<p>III.—No Swedish or Norwegian subject shall be delivered up to the Government of the United Kingdom; and no subject of the United Kingdom shall be delivered up by the Government thereof to the Swedish or Norwegian Government.</p>	
No extradition if person has been or is being tried.	<p>IV.—The extradition shall not take place if the person claimed has already been tried and discharged or punished, or is still under trial in the country where he has taken refuge, for the crime for which his extradition is demanded.</p>	
Trial for another offence pending, surrender postponed.	<p>If the person claimed should be under examination for any other crime in the country where he has taken refuge, his extradition shall be deferred until the conclusion of the trial, and the full execution of any punishment awarded to him.</p>	
No extradition if offence prescribed.	<p>V.—The extradition shall not take place if, subsequently to the commission of the crime, or the institution of the penal prosecution or the conviction thereon, exemption from prosecution or punishment has been acquired by lapse of time, according to the laws of the country where the criminal has taken refuge.</p>	
Political offences.	<p>VI.—A fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded is one of a political</p>	

character, or if he prove that the requisition for his surrender has in fact been made with a view to try or punish him for an offence of a political character. Sweden.

VII.—A person surrendered by either of the High Contracting Parties to the other, cannot, until he has been restored or had an opportunity of returning to the country from whence he was surrendered, be triable or tried for any crime committed in the other country other than that on account of which the extradition shall have taken place. Trial after surrender to be limited to extradition offence.

This stipulation does not apply to crimes committed after the extradition.

VIII.—The requisitions for extradition shall be made through the Diplomatic Agents of the High Contracting Parties respectively. Requisitions.

The requisition for the extradition of an accused person must be accompanied by a warrant of arrest issued by the competent authority of the State requiring the extradition, and by such evidence as, according to the laws of the place where the accused is found, would justify his arrest if the crime had been committed there. Arrest to be justified by law of extraditing State;

If the requisition relates to a person already convicted, it must be accompanied by the sentence of condemnation passed against the convicted person by the competent Court of the State that makes the requisition for extradition. evidence of conviction.

The requisition ought, as far as possible, to be accompanied by a description of the person accused or convicted in order to identify him.

A requisition for extradition cannot be founded on sentences passed *in contumaciam*.

IX.—If the requisition for extradition be in accordance with the foregoing stipulations, the competent authorities of the State applied to shall proceed to the arrest of the fugitive. Arrest.

The prisoner is then to be brought before a competent Magistrate, who is to examine him and to conduct the preliminary investigation of the case, just as if the apprehension had taken place for a crime committed in the same country.

The extradition shall not take place before the expiration of 15 days from the apprehension, and then only if the evidence be found sufficient, according to the laws of the State applied to, either to justify the committal of the prisoner for trial, or to prove that the prisoner is the identical person convicted by the Courts of the State which makes the requisition. Evidence to justify committal for trial in extraditing State.

- Sweden.** X.—In the examinations which they have to make, in accordance with the foregoing stipulations, the authorities of the State applied to shall admit as entirely valid evidence the sworn depositions or statements of witnesses taken in the other State, or copies thereof, and likewise the warrants and sentences issued therein, provided such documents are signed or certified by a Judge, Magistrate, or officer of such State, and are authenticated by the oath of some witness, or by being sealed with the official seal of the Minister of Justice, or some other Minister of State.
- Evidence taken in claiming State to be admitted.**
- XI.—If sufficient evidence for the extradition be not produced within 2 months from the date of the apprehension of the fugitive, he shall be set at liberty.
- Delays for presenting evidence.**
- Articles seized.** XII.—All articles seized, which were in the possession of the person to be surrendered at the time of his apprehension shall, if the competent authority of the State applied to for the extradition has ordered the delivery of such articles, be given up when the extradition takes place; and the said delivery shall extend, not merely to the stolen articles, but to everything that may serve as a proof of the crime.
- Expenses.** XIII.—Each of the High Contracting Parties shall defray and bear expenses incurred by it in the arrest, maintenance, and conveyance of the individual surrendered till placed on board ship, as well as in keeping and conveying the articles which are to be delivered up in conformity with the stipulations of the preceding Article.
- Transit through third State.** The individual to be surrendered shall be conveyed to the port specified by the applying Government, at whose expense he shall be taken on board the ship to convey him away.
- If it be necessary to convey the individual claimed through the territories of another State, the expenses incurred thereby shall be defrayed by the applying State.
- Extradition to and from Colonies.** XIV.—The stipulations of the present Treaty shall be applicable to the Colonies and foreign possessions of the two High Contracting Parties.
- The requisition for the surrender of a fugitive criminal who has taken refuge in a Colony or foreign possession, of either Party shall be made to the Governor or chief authority of such Colony or possession by the chief Consular Officer of the other in such Colony or possession; or, if the fugitive has escaped from a Colony or foreign possession of the Party on whose behalf the requisition is made, by the Governor or chief authority of such Colony or possession.

Such requisitions may be disposed of, subject always, as nearly as may be, to the provisions of this Treaty, by the respective Sweden. Governors or chief authorities, who, however, shall be at liberty either to grant the surrender, or to refer the matter to their Government.

Her Britannic Majesty shall, however, be at liberty to make British Colonies. special arrangements in the British Colonies and foreign possessions for the surrender of Swedish and Norwegian criminals who may there take refuge, on the basis, as nearly as may be, of the provisions of the present Treaty.

XVIII.—The present Treaty shall come into force 10 days after its publication, in conformity with the forms prescribed by the laws of the High Contracting Parties. It may be terminated by either of the High Contracting Parties, but shall remain in force for 6 months after notice has been given for its termination.

The present Treaty shall be ratified, and the ratifications shall be exchanged at Stockholm, as soon as may be possible.

SWITZERLAND.

[Treaty, 26th November, 1880. O. in C. 18th May, 1881.

Supplementary Convention, 29th June, 1904.

O. in C. 29th May, 1905. Acts in force from 30th May, 1881.]

I.—Her Majesty the Queen of the United Kingdom of Great Agreement to Britain and Ireland engages to deliver up, under the circum- extradite. stances and on the conditions stipulated in the present Treaty, all persons, and the Swiss Federal Council engages to deliver up, under the like circumstances and conditions, all persons, excepting Swiss citizens, who, having been charged with, or convicted by the tribunals of one of the two High Contracting Parties of the crimes or offences enumerated in Article II, committed in the territory of the one Party, shall be found within the territory of the other.

II.—The crimes for which the extradition is to be granted are Extradition the following:— offences.

- | | |
|---|--|
| <p>1. Murder (including infan-
ticide) and attempt to murder.</p> <p>2. Manslaughter.</p> | <p>1. Mord, mit Inbegriff des
Kindsmordes, und Mordsver-
such.</p> <p>2. Todtschlag.</p> |
|---|--|

Switzerland.

3. Counterfeiting or altering money, uttering or bringing into circulation counterfeit or altered money.

4. Forgery, or counterfeiting, or altering, or uttering what is forged, or counterfeited, or altered; comprehending the crimes designated in the Penal Codes of both States as counterfeiting or falsification of paper money, bank notes, or other securities, forgery, or falsification of other public or private documents, likewise the uttering or bringing into circulation, or wilfully using such counterfeited, forged, or falsified papers.

5. Embezzlement or larceny.

6. Obtaining money or goods by false pretences.

7. Crimes against bankruptcy law.

8. Fraud committed by a bailee, banker, agent, factor, trustee, or director, or member or public officer of any company made criminal by any law for the time being in force.

3. Nachmachen oder Verfälschen von Metallgeld, Ausgeben oder Inverkehrsetzen nachgemachten oder verfälschten Metallgeldes.

4. Fälschung, Nachmachen oder Verändern, sowie die Verausgabung dessen, was nachgemacht, gefälscht oder verändert ist, nämlich die Verbrechen welche in den Strafgesetzen der beiden Staten als Nachmachen oder Verfälschen von Papiergeld, Banknoten oder andern Werthschriften enthalten sind; ferner die Fälschung oder Verfälschung anderer öffentlicher oder Privatkunden, sowie das Ausgeben, oder Inverkehrsetzen und der wissentlich Gebrauch solcher nachgemachter, gefälschter oder verfälschter Papiere.

5. Unterschlagung oder Diebstahl.

6. Betrug, resp. Erlangung von Geld oder andern Sachen durch falsche Vorspiegelungen.

7. Betrügerlicher Bankerott, resp. Verbrechen gegen das Gesetz betreffend Bankerott.

8. Untreue von Seite eines Verwalters und Beauftragten, Bankiers, Agenten, Commissionärs, Verwalters von Vermögen Dritter, Vorstandes, Mitgliedes oder Beamten irgend einer Gesellschaft, soweit dieselbe nach den dannzumal bestehenden Gesetzen als Verbrechen behandelt wird.

9. Rape.	9. Nothzucht.	<u>Switzerland.</u>
10. Abduction of minors.	10. Entführung von Minderjähri- gen.	
11. Child-stealing or kidnap- ping.	11. Menschenraub.	
12. Burglary, or house- breaking, with criminal intent.	12. Einbrechen oder Eindringen in ein Wohnhaus in verbrecherischer Absicht zur Tages oder Nachtzeit.	
13. Arson.	13. Brandstiftung.	
14. Robbery with violence.	14. Raub mit Gewaltthätigkeit.	
15. Threats by letter or otherwise with intent to extort.	15. Drohungen mittels Brief oder auf andere Weise, mit der Absicht, zu erpressen.	
16. Perjury or subornation of perjury.	16. Meineid und Austiftung zum Meineid.	
17. Malicious injury to property, if the offence be indictable.	17. Böswillige Eigenthumsbeschädigung, insofern sie von Amtes wegen als Verbrechen verfolgt wird.	

The extradition is also to take place for participation in any Accessories. of the aforesaid crimes, as an accessory before or after the fact, provided such participation be punishable by the laws of both Contracting Parties.

III.—A fugitive criminal may be apprehended in either country, under a warrant issued by any Police Magistrate, Justice of the Peace, or other competent authority on such information or complaint, and such evidence, or after such proceedings as would, in the opinion of the person issuing the warrant, justify the issue of a warrant if the crime had been committed or the person convicted in that part of the dominions of the two Contracting Parties in which the Magistrate, Justice of the Peace, or other competent authority exercises jurisdiction: provided, however, that, in the United Kingdom, the accused shall, in such case, be sent as speedily as possible before a Police Magistrate in London. Arrest on warrant, if justified by law of extraditing State.

Requisitions for provisional arrest may be addressed by post or telegraph, provided they purport to be sent by some judicial or other competent authority. Such requisition must contain a description in general terms of the crime or offence, and a statement that a warrant has been granted for the arrest of the criminal, and that his extradition will be demanded.

Switzerland. He shall in accordance with this Article be discharged, as well in the United Kingdom as in Switzerland, if within the term of 30 days a requisition shall not have been made for his surrender by the Diplomatic Agent of his country in accordance with the stipulations of this Treaty.

Delay for presenting requisition.

Requisitions. IV.—The requisition for extradition must always be by the way of diplomacy, and to wit, in Switzerland by the British Minister to the President of the Confederation, and in the United Kingdom to the Secretary of State for Foreign Affairs by the Swiss Consul-General in London, who, for the purpose of this Treaty, is hereby recognised by Her Majesty as a Diplomatic Representative of Switzerland.

Proceedings on requisitions in the United Kingdom.

V.—In the dominions of Her Britannic Majesty, other than the Colonies or foreign possessions of Her Majesty, the manner of proceeding shall be as follows:—

(a) In the case of a person accused—

Accused persons.

The requisition for the surrender shall be made to Her Britannic Majesty's Principal Secretary of State for Foreign Affairs by the Diplomatic Representative of the Swiss confederation. The said demand shall be accompanied by a warrant of arrest, or other equivalent judicial document, issued by a Judge or Magistrate duly authorised to take cognizance of the acts charged against the accused in Switzerland, and duly authenticated depositions or statements taken on oath, or solemnly declared to be true, before such Judge or Magistrate, clearly setting forth the said acts, and containing a description of the person claimed, and any particulars which may serve to identify him.

The said Principal Secretary of State shall transmit such documents to Her Britannic Majesty's Principal Secretary of State for the Home Department, who shall then, by order under his hand and seal, signify to some Police Magistrate in London that such requisition has been made, and require him, if there be due cause, to issue his warrant for the apprehension of the fugitive. On the receipt of such order from the Secretary of State, and on the production of such evidence as would, in the opinion of the Magistrate, justify the issue of the warrant if the crime had been committed in the United Kingdom, he shall issue his warrant accordingly.

When the person claimed shall have been apprehended he shall be brought before the Magistrate who issued the warrant, or some other Police Magistrate in London. If the evidence to be then produced shall be such as to justify, according to the law

of England, the committal for trial of the prisoner, if the crime of Switzerland. which he is accused had been committed in the United Kingdom, the Police Magistrate shall commit him to prison to await the warrant of the Secretary of State for his surrender; sending immediately to the Secretary of State a certificate of the committal and a report upon the case. Evidence to justify committal for trial in England.

After the expiration of a period from the committal of the prisoner which shall never be less than 15 days, the Secretary of State shall, by order under his hand and seal, order the fugitive criminal to be sent to such seaport town, as shall, in each special case, be selected for his delivery to the Swiss Government.

(b) In the case of a person convicted—

The course of proceeding shall be the same as in the case of Convicted persons. a person accused, except that the warrant to be transmitted by the Diplomatic Representative of Switzerland in support of his requisition shall clearly set forth the crime or offence of which the person claimed has been convicted, and state the place and date of his conviction.

The evidence to be produced shall consist of the penal sentence passed against the convicted person by the competent Court of the State claiming his extradition.

(c) Persons convicted by judgment in default or *arrêt de contumace*, shall be, in the matter of extradition, considered as persons accused, and, as such, be surrendered.

(d) After the Police Magistrate shall have committed the Habeas corpus. accused or convicted person to prison to await the order of a Secretary of State for his surrender, such person shall have the right to apply for a writ of *habeas corpus*; if he should so apply, his surrender must be deferred until after the decision of the Court upon the return to the writ, and even then can only take place if the decision is adverse to the applicant. In the latter case, the Court may at once order his delivery to the person authorised to receive him, without waiting for the order of a Secretary of State for his surrender, or commit him to prison to await such order.

VI.—In Switzerland the manner of proceeding shall be as Proceedings on requisitions in Switzerland. follows:—

The requisition for the extradition of an accused person must be accompanied by an authentic copy of the warrant of arrest, issued by a competent official or Magistrate, clearly setting forth the crime or offence of which he is accused, together with a properly legalized information setting forth the facts and evidence upon which the warrant was granted. Accused persons.

Switzerland.

Convicted
persons.

If the requisition relates to a person already convicted, it must be accompanied by an authentic copy of the sentence or conviction, setting forth the crime or offence of which he has been convicted.

The requisition must be accompanied by a description of the person claimed, and, if it be possible, by other information and particulars which may serve to identify him.

After having examined those documents, the Swiss Federal Council shall communicate them to the Cantonal Government in whose territory the person charged is found, in order that he may be examined by a judicial or police officer on the subject of their contents.

The Cantonal Government will transmit the *procès-verbal* of the examination, together with all documents, accompanied, if there be only one, by a more detailed report to the Federal Council, who, after having examined them, and there being no opposition on either side, will grant the extradition, and will communicate its decision both to the British Legation and to the Cantonal Government in question, to the latter in order that it may send the person to be surrendered to such place on the frontier, and deliver him to such foreign police authority as the British Legation may name in each special case.

Should the documents furnished with a view of proving the facts, or of establishing the identity of the accused, or the particulars collected by the Swiss authorities appear insufficient, notice shall be immediately given to the Diplomatic Representative of Great Britain, in order that he may furnish further evidence. If such further evidence be not furnished within 15 days the person arrested shall be set at liberty.

In the event of the application of this Treaty being contested, the Swiss Federal Council will transmit the documents (*'dossier'*) to the Swiss Federal Tribunal, whose duty it is to decide definitely the question whether extradition should be granted or refused.

The Federal Council will communicate the judgment of the Federal Tribunal to the British Legation. If this judgment grants the extradition the Federal Council will order its execution, as in the case when the Federal Council itself grants the extradition. If, on the other hand, the Federal Tribunal refuses the extradition, the Federal Council will immediately order the person accused to be set at liberty.

Evidence taken
in claiming State
to be admitted.

VII.—In the examinations which they have to make in accordance with the foregoing stipulations, the authorities of the

State applied to shall admit as entirely valid evidence the depositions or statements of witnesses either sworn or solemnly declared to be true, taken in the other State, or copies thereof, and likewise the warrants and sentences issued therein, or copies thereof, provided such documents purport to be signed or certified by a Judge, Magistrate, or officer of such State, and are authenticated by the official seal of a British Secretary of State, or of the Chancellor of the Swiss Confederation, being affixed thereto.

Switzerland.

Authentication
of documents.

The personal attendance of witness can be required only to establish the identity of the person who is being proceeded against with that of the person arrested.

VIII.—If proof sufficient to warrant the extradition be not furnished within 2 months from the day of the apprehension, the person arrested shall be discharged from custody.

Delay for
production of
evidence.

IX.—In cases where it may be necessary, the Swiss Government shall be represented at the English Courts by the Law Officers of the Crown, and the English Government in the Swiss Courts by the competent Swiss authorities.

Representation
of Governments
in the Courts.

The respective Governments will give the necessary assistance within their territories to the Representatives of the other State who claim their intervention for the custody and security of the persons subject to extradition.

No claim for the repayment of expenses for the assistance mentioned in this Article shall be made by either of the Contracting Parties.

X.—The present Treaty shall apply to crimes and offences committed prior to the signature of the Treaty; but a person surrendered shall not be tried for any crime or offence committed in the other country before the extradition other than the crime for which his surrender has been granted.

Trial after
extradition to be
limited to
extradition
offence.

XI.—A fugitive criminal shall not be surrendered, if the offence in respect of which his surrender is demanded is one of a political character, or if he prove that the requisition for his surrender has, in fact, been made with a view to try and punish him for an offence of a political character.

Political offences.

XII.—The extradition shall not take place if, subsequently to the commission of the crime, or the institution of the penal prosecution, or the conviction thereon, exemption from prosecution or punishment has been acquired according to the laws of the State applied to.

No extradition
if offence
prescribed.

XIII.—The extradition shall not take place if the person claimed on the part of the Government of the United Kingdom,

No extradition if
person has been
or is being tried.

- Switzerland. or the person claimed on the part of the Swiss Government, has already been tried and discharged or punished, or is still under trial, in one of the Swiss Cantons or in the United Kingdom respectively, for the crime for which his extradition is demanded.
- Trial for another offence pending, surrender postponed. XIV.—If the person claimed on the part of the Government of the United Kingdom, or if the person claimed on the part of the Swiss Government, should be under examination, or have been condemned for any other crime in one of the Swiss Cantons or in the United Kingdom respectively, his extradition may be deferred until he shall have been set at liberty in due course of law.
- Pendency of civil proceedings. In case such individual should be proceeded against in the country in which he has taken refuge, on account of obligations contracted towards private individuals, his extradition shall, nevertheless, take place; the injured party retaining his right to prosecute his claims before the competent authority.
- Claims by several States. XV.—If the individual claimed by one of the two High Contracting Parties in pursuance of the present Treaty should be also claimed by one or several other Powers, on account of other crimes or offences committed upon their respective territories, his extradition shall be granted to that State whose demand is earliest in date.
- Articles seized. XVI.—All articles seized, which were in the possession of the person to be surrendered, at the time of his apprehension, shall, if the competent authority of the State applied to for the extradition has ordered the delivery thereof, be given up when the extradition takes place, and the said delivery shall extend not merely to the stolen articles, but to everything that may serve as a proof of the crime.
- This delivery shall take place even when the extradition, after having been granted, cannot be carried out by reason of the escape or death of the individual claimed, unless the claims of third parties with regard to the above-mentioned articles render such delivery inexpedient.
- Expenses. XVII.—The Contracting Parties renounce any claim for the reimbursement of the expenses incurred by them in the arrest and maintenance of the person to be surrendered, and his conveyance to the frontiers of the State to which the requisition is made; they reciprocally agree to bear such expenses themselves.
- XVIII.—The stipulations of the present Treaty shall be applicable to the Colonies and foreign possessions of Her Britannic Majesty.

The requisition for the surrender of a fugitive criminal who has taken refuge in any of such Colonies or foreign possessions may be made to the Governor or chief authority of such Colony or possession through the Swiss Consul residing there, or, in case there should be no Swiss Consul, through the recognised Consular Agent of another State charged with the Swiss interests in the Colony or possession in question.

Switzerland.

Extradition by
British Colonies.

The Governor or supreme authority above-mentioned shall decide with regard to such requisitions as nearly as possible in accordance with the provisions of the present Treaty. He will, however, be at liberty either to consent to the extradition or report the case to his Government.

Her Britannic Majesty shall, however, be at liberty to make special arrangements in the British Colonies and foreign possessions for the surrender of such individuals as shall have committed in Switzerland any of the crimes hereinbefore mentioned, who may take refuge within such Colonies and foreign possessions, on the basis, as nearly as may be, of the provisions of the present Treaty.

The requisition for the surrender of a fugitive criminal emanating from any Colony or foreign possession of Her Britannic Majesty shall be governed by the rules laid down in the preceding Articles of the present Treaty.

Extradition to
British Colonies.

XIX.—The present Treaty shall come into force 10 days after its publication, in conformity with the forms prescribed by the laws of the High Contracting Parties.

After the Treaty shall have come into force, the Treaty concluded between the High Contracting Parties on the 31st of March, 1874, shall be considered as cancelled, except as to any proceedings that may have been already taken or commenced in virtue thereof.

Repeal.

It may be terminated by either of the High Contracting Parties, on giving to the other Party 6 months notice of its intention to terminate the same, but no such notice shall exceed the period of one year.

The Treaty shall be ratified, and the ratifications shall be exchanged at Berne as soon as possible.

Supplementary Declaration, 29th June, 1904.

The Government of His Majesty the King of the United Kingdom of Great Britain and Ireland and the Federal Council of the Swiss Confederation, having deemed it necessary to

Switzerland. extend, so far as regards the relations of Switzerland with the British Colonies and foreign possessions, the periods respectively fixed by Article III, paragraph 3, and Article VIII of the Treaty concluded on the 26th November, 1880, . . .

The following stipulation is added to the first paragraph of Article XVIII of the Treaty of Extradition;—

Extradition from
British Colonies.

Nevertheless, so far as regards the relations of Switzerland with these Colonies and foreign possessions, the period of time fixed by Article III, paragraph 3, within which the requisition for extradition is to be made through the diplomatic channel, shall be 6 weeks; and that provided by Article VIII for the production of proof sufficient to warrant the extradition shall be 3 calendar months.

The present Convention shall come into force from the date when the ratifications shall be exchanged. It shall have the same force and duration as the Treaty of Extradition of the 26th November, 1880, to which it relates.

It shall be ratified, and the ratifications shall be exchanged at London as soon as possible.

UNITED STATES OF AMERICA.

[Treaty, 9th August, 1842; articles X, XI. §
Convention 12th July, 1889. O. in C. 21st March, 1890.

Acts in force from 4th April, 1890.

Supplementary Convention, 13th December, 1900.

O. in C. 26th June, 1901. Supplementary Convention, 12th April, 1905.

O. in C. 11th February, 1907].

Treaty, 9th August, 1842.

Agreement to
extradite.

X.—It is agreed that Her Britannic Majesty and the United States shall, upon mutual requisitions by them or their ministers, officers, or authorities, respectively made, deliver up to justice all persons who, being charged with the crime of

Extradition
offences.

murder, or
assault with intent to commit murder, or
piracy, or

§ The Acts are in force with regard to these two articles of the Ashburton Treaty, in virtue of s. 27 of the Act of 1870.

The Act, 6 Edw. VII, c. 15, was passed in order to enable the Order in Council to be issued applying the Acts to the Supplementary Convention of 12th April, 1905.

arson, or
robbery, or
forgery, or
the utterance of forged paper,

committed within the jurisdiction of either, shall seek an asylum, or shall 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 person so charged shall be found, would justify his apprehension and commitment for trial, if the crime or offence had there been committed: and the respective Judges and other Magistrates of the two Governments shall have power, jurisdiction, authority upon complaint made under oath, to issue a warrant for the apprehension of the fugitive or person so charged, that he may be brought before such Judges or other Magistrates respectively, to the end that the evidence of criminality may be heard and considered; and if, on such hearing, the evidence be deemed sufficient to sustain the charge, it shall be the duty of the examining Judge or Magistrate to certify the same to the proper Executive Authority, that a warrant may issue for the surrender of such fugitive. The expense of such apprehension and delivery shall be borne and defrayed by the party who makes the requisition and receives the fugitive.

XI.—The tenth Article shall continue in force until one or the other of the Parties shall signify its wish to terminate it, and no longer.

Convention, 12th July, 1889.

Whereas by the Xth Article of the Treaty concluded between Her Britannic Majesty and the United States of America on the 9th day of August, 1842, provision is made for the extradition of persons charged with certain crimes;

And whereas it is now desired by the High Contracting Parties that the provisions of the said Article should embrace certain crimes not therein specified, and should extend to fugitives convicted of the crimes specified in the said Article and in this Convention;

I.—The provisions of the said Xth Article are hereby made applicable to the following additional crimes:—

1. Manslaughter when voluntary.
2. Counterfeiting or altering money; uttering or bringing into circulation counterfeit or altered money.
3. Embezzlement; larceny; receiving any money, valuable security, or other property, knowing the same to have been embezzled, stolen, or fraudulently obtained.

Further
extradition
offences.

United States of America. 4. Fraud by a bailee, banker, agent, factor, trustee, or director or member or officer of any company, made criminal by the laws of both countries.

5. Perjury, or subornation of perjury.

6. Rape; abduction; child-stealing; kidnapping.

7. Burglary; house-breaking or shop-breaking.

8. Piracy by the law of nations.

9. Revolt, or conspiracy to revolt, by two or more persons on board a ship on the high seas, against the authority of the master; wrongfully sinking or destroying a vessel at sea, or attempting to do so; assaults on board a ship on the high seas, with intent to do grievous bodily harm.

10. Crimes and offences against the laws of both countries for the suppression of slavery and slave trading.

Supplementary
Convention,
13th Dec. 1900.

11. Obtaining money, valuable securities, or other property by false pretences.

12. Wilful and unlawful destruction or obstruction of railroads which endangers human life.

13. Procuring abortion.

Supplementary
Convention,
12th April, 1905.

14. Bribery, defined to be the offering, giving, or receiving of bribes made criminal by the laws of both countries.

15. Offences, if made criminal by the laws of both countries, against bankruptcy law.

Accessories.

Extradition is also to take place for participation in any of the crimes mentioned in this Convention, or in the aforesaid Xth Article, provided such participation be punishable by the laws of both countries.

Political offences. II.—A fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded is one of a political character, or if he prove that the requisition for his surrender has in fact been made with a view to try or punish him for an offence of a political character.

No person surrendered by either of the High Contracting Parties to the other shall be triable or tried, or be punished for any political crime or offence, or for any act connected therewith, committed previously to his extradition.

If any question shall arise as to whether a case comes within the provisions of this Article, the decision of the authorities of the Government in whose jurisdiction the fugitive shall be at the time shall be final.

No person surrendered by or to either of the High Contracting Parties shall be triable or be tried for any crime or offence committed prior to his extradition, other than the offence for which he was surrendered, until he shall have had an opportunity of returning to the country from which he was surrendered.

United States of America.

Trial after surrender to be limited to extradition offence.

IV.—All articles seized which were in the possession of the person to be surrendered at the time of his apprehension, whether being the proceeds of the crime or offence charged, or being material as evidence in making proof of the crime or offence, shall, so far as practicable, and if the competent authority of the State applied to for the extradition has ordered the delivery thereof, be given up when the extradition takes place. Nevertheless, the rights of third parties with regard to the articles aforesaid shall be duly respected.

Articles seized.

V.—If the individual claimed by one of the two High Contracting Parties, in pursuance of the present Convention, should also be claimed by one or several other Powers on account of crimes or offences committed within their respective jurisdictions, his extradition shall be granted to that State whose demand is first received.

Claims by several States.

The provisions of this Article, and also of Articles II to IV inclusive, of the present Convention, shall apply to surrender for offences specified in the aforesaid Xth Article, as well as to surrender for offences specified in this Convention.

VI.—The extradition of fugitives under the provisions of this Convention and of the said Xth Article shall be carried out in Her Majesty's dominions and in the United States, respectively, in conformity with the laws regulating extradition for the time being in force in the surrendering State.

Surrender to be in accordance with extradition law.

VII.—The provisions of the said Xth Article and of this Convention shall apply to persons convicted of crimes therein respectively named and specified, whose sentence therefor shall not have been executed.

Persons convicted.

In case of a fugitive criminal alleged to have been convicted of the crime for which his surrender is asked, a copy of the record of the conviction, and of the sentence of the Court before which such conviction took place, duly authenticated, shall be produced, together with the evidence proving that the prisoner is the person to whom such sentence refers.

VIII.—The present Convention shall not apply to any of the crimes herein specified which shall have been committed, or to

No surrender for crimes committed prior to convention.

United States of America. any conviction which shall have been pronounced, prior to the date at which the Convention shall come into force.

IX.—This Convention shall be ratified, and the ratifications shall be exchanged at London as soon as possible.

It shall come into force 10 days after its publication, in conformity with the forms prescribed by the laws of the High Contracting Parties, and shall continue in force until one or the other of the High Contracting Parties shall signify its wish to terminate it, and no longer.

Supplementary Convention, 13th December, 1900.

Her Majesty the Queen of Great Britain and Ireland and the President of the United States of America, being desirous of enlarging the list of crimes on account of which extradition may be granted under the Convention concluded between Her Britannic Majesty and the United States on the 12th July, 1889, with a view to the better administration of justice and the prevention of crime in their respective territories and jurisdiction, have resolved to conclude a Supplementary Convention for this purpose . . . ;—

Additional
extradition
offences.

I.—The following crimes are added to the list of crimes numbered 1 to 10 in the first Article of the said Convention of 12 July, 1889, on account of which extradition may be granted, that is to say:—

11. Obtaining money, valuable securities, or other property by false pretences.

12. Wilful and unlawful destruction or obstruction of railroads which endangers human life.

13. Procuring abortion.

II.—The present Convention shall be considered as an integral part of the said Extradition Convention of 12th July, 1889, and the first Article of the last-mentioned Convention shall be read as if the last of crimes therein contained had originally comprised the additional crimes specified, and numbered 11 to 13 in the first Article of the present Convention.

The present Convention shall be ratified, and the ratifications shall be exchanged either at London or Washington as soon as possible.

It shall come into force 10 days after its publication, in conformity with the laws of the High Contracting Parties, and it shall continue and terminate in the same manner as the said Convention of 12th July, 1889.

Supplementary Convention, 12th April, 1905.

United States
of America.

[The preamble is the same as in the Convention of 1900, except that it recites the intentions of His Majesty the King and the President].

I.—The following crimes are added to the list of crimes numbered 1 to 10 in the 1st Article of the said Convention of the 12th July, 1889, and to the list of crimes numbered 11 to 13 in Article 1 of the Supplementary Convention concluded between the United States and Great Britain on the 13th December, 1900, that is to say;—

14. Bribery, defined to be the offering, giving, or receiving of bribes made criminal by the laws of both countries. Additional extradition offences.

15. Offences, if made criminal by the laws of both countries, against bankruptcy law.

II.—The present Convention shall be considered as an integral part of the said Extradition Conventions of 12th July, 1889, and 13th December, 1900, and the 1st Article of the said Convention of 12th July, 1889, shall be read as if the lists of crimes therein contained had originally comprised the additional crimes specified and numbered 14 and 15 in the 1st Article of the present Convention.

[The last two paragraphs are as in the Convention of 1900].

URUGUAY.

[Treaty, 26th March, 1884. O. in C. 5th March, 1885.
Protocol, 20th March, 1891. O. in C. 24th November 1891.
Acts in force from 20th March, 1885.]

I.—The High Contracting Parties engage to deliver up to each other reciprocally, under the circumstances and conditions stated in the present Treaty, all persons, excepting their own subjects or citizens, who, being accused or convicted of any of the crimes enumerated in Article II, committed in the territory of the one Party, shall be found within the territory of the other Party. Agreement to extradite.

II.—The extradition shall be reciprocally granted for the following crimes or offences:— Extradition offences.

1. Murder (including assassination, parricide, infanticide, I. Asesinato, parricidio, infanticidio, envenenamiento, ó

<u>Uruguay.</u>	<p>poisoning, or attempt to murder).</p> <p>2. Manslaughter.</p> <p>3. Administering drugs or using instruments with intent to procure the miscarriage of women.</p> <p>4. Rape.</p> <p>5. Aggravated or indecent assault. Carnal knowledge of a girl under the age of 10 years; carnal knowledge of a girl above the age of 10 years and under the age of 12 years; indecent assault upon any female, or any attempt to have carnal knowledge of a girl under 12 years of age.</p> <p>6. Kidnapping and false imprisonment, child-stealing, abandoning, exposing, or unlawfully detaining children.</p> <p>7. Abduction of minors.</p> <p>8. Bigamy.</p> <p>9. Wounding, or inflicting grievous bodily harm, when such acts cause permanent disease or incapacity for personal labour, or the absolute loss or privation of a member or organ.</p> <p>10. Arson.</p> <p>11. Burglary or house-breaking, robbery with violence, larceny or embezzlement.</p> <p>12. Fraud by banker, agent, factor, trustee, director, member, or public officer of any company, made criminal by any law for the time being in force.</p>	<p>tentativa de asesinato.</p> <p>2. Homicidio.</p> <p>3. Aborto voluntario.</p> <p>4. Violacion.</p> <p>5. Atentado grave contra el pudor consumado sobre persona de uno ú otro sexo menor de 12 años.</p> <p>6. Seceustro, robo, abandono, esposicion, ó retencion ilegal de niños.</p> <p>7. Sustraccion de menores.</p> <p>8. Bigamia.</p> <p>9. Heridas ó lesiones corporales graves cuando causen enfermedad ó incapacidad permanentes de trabajo personal, la pérdida ó privacion absoluta de un miembro ó un órgano.</p> <p>10. Incendio voluntario.</p> <p>11. Hurto y robo.</p> <p>12. Defraudacion cometida por un banquero, comisionista, administrador, tutor, curador, liquidador, síndico, funcionario público, director, miembro ó empleado de una sociedad, ó por cualquier otra persona.</p>
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13. Obtaining money, valuable security, or goods by false pretences; receiving any money, valuable security, or other property knowing the same to have been feloniously stolen or unlawfully obtained, the quantity or value of which shall be greater in amount than 200*l.* sterling.

14.—(a) Counterfeiting or altering money, or bringing into circulation counterfeited or altered money;

(b) Forgery, or counterfeit-ing, or altering or knowingly uttering what is forged, counterfeited, or altered;

(c) Knowingly making without lawful authority any instrument, tool, or engine adapted or intended for the counterfeiting of coin of the realm.

15. Crimes against the bankruptcy law.

16. Any malicious act done with intent to endanger persons in a railway train.

17. Malicious injury to property if such offence be indictable, and punishable with one year's imprisonment or more.

18. Crimes committed at sea:—

13. Estafa, ocultacion fraudulenta de dinero, valores ú objetos muebles y adquisicion de los mismos, con conocimiento de que han sido ilegalmente obtenidos, cuya cantidad ó precio sea mayor de doscientas libras esterlinas.

14.—(a) Fabricacion ó espendio de moneda falsa ó alterada;

(b) Falsificacion de documentos de importancia ó empleo de los mismos á sabiendas; falsificacion de los sellos del Estado, punzones, timbres ó papel sellado, ó empleo de sellos, punzones ó timbres falsificados con conocimiento del delito que se comete;

(c) Fabricacion ilegal de instrumentos para la falsificacion del cuño de la moneda.

15. Bancarrota fraudulenta.

16. Actos cometidos con intencion de poner en peligro la vida de los viajeros en un tren de camino de hierro.

17. Destruccion ó deterioro de cualquier propiedad mueble ó inmueble penado por la ley con un ano ó mas de prision.

18. Crímenes que se cometen en la mar:—

Uruguay.	<p>(a) Piracy by the law of nations;</p> <p>(b) Sinking or destroying a vessel at sea, or attempting or conspiring to do so;</p> <p>(c) Revolt or conspiracy to revolt by two or more persons on board a ship on the high seas against the authority of the master;</p> <p>(d) Assault on board a ship on the high seas with intent to destroy life, or to do grievous bodily harm.</p> <p>19. Dealing in slaves in such manner as to constitute an offence against the laws of both countries.</p>	<p>(a) Piratería;</p> <p>(b) Destruccion ó pérdida de un buque, causada intencionalmente, ó conspiracion para dicho objeto;</p> <p>(c) Rebelion ó conspiracion por dos ó mas personas para rebelarse á bordo de un buque contra la autoridad del capitan á bordo de un buque en alta mar;</p> <p>(d) Actos cometidos con intencion de matar ó de causar daño material á personas á bordo de un buque en alta mar.</p> <p>19. Trata de esclavos, con arreglo á las leyes de cada uno de ambos Estados respectivamente.</p>
Crimes committed before the Treaty.	<p>III.—The provisions of the present Treaty shall not be applicable to offences committed before the date of its conclusion.</p>	
Trial after extradition to be limited to extradition offence.	<p>IV.—A person surrendered shall not be detained or tried for any crime or offence committed in the other country before the extradition other than the crime or offence for which his surrender has been granted.</p>	
Political offences.	<p>V.—No person shall be surrendered if the offence in respect of which his surrender is demanded is one of a political character, or if he prove to the satisfaction of the competent authority of the State in which he is that the requisition for his surrender has in fact been made with a view to try and punish him for an offence of a political character.</p>	
Proceedings on requisitions in Uruguay.	<p>VI.—In the Oriental Republic of the Uruguay the proceedings for the demand and obtaining extradition shall be as follows:—</p> <p>The Diplomatic Representative or Consul-General of Great Britain shall address to the Minister Secretary of State in the Department of Foreign Relations, with the demand for extradition, an authentic and legalized copy of the sentence or mandate of arrest issued by competent authority, or other documents of the same legal force, against the accused person, setting forth clearly the crime or offence on account of which proceedings are being taken against the fugitive. These judicial</p>	

documents shall be accompanied, if possible, by a description of the person claimed, and by any other information or intelligence that may serve to identify such person. Uruguay.

These documents shall be communicated by the Minister of Foreign Relations to the Superior Tribunal of Justice, which, in its turn, shall transmit them to the Stipendiary Magistrate (*Juez Letrado del Crimen*). This functionary shall have power, authority, and jurisdiction, in virtue of the claim preferred, to issue the formal order of arrest of the person so claimed, in order that he may be brought before him, and that, in his presence, and after hearing his defence, the proofs of his criminality may be taken into consideration; and if the result of this audience be that the said proofs are sufficient to sustain the charge, he shall be obliged to issue the formal order of delivery, giving notice thereof, by the medium of the Superior Tribunal of Justice, to the Minister of Foreign Relations, who shall dictate the necessary measures for placing the fugitive at the disposal of the British Agents charged to receive him.

In case the documents furnished by Her Britannic Majesty's Government for the identification of the person claimed, or the information obtained for the same end by the authorities of the Oriental Republic of the Uruguay, be held to be insufficient, notice shall immediately be given of the fact to the Diplomatic Representative or Consular Agent of Great Britain, the person under arrest remaining in custody until the British Government shall have furnished new proofs to establish the identity of such person, or evidence to clear up other difficulties relative to the examination of, and decision upon, the matter.

The arrest above referred to of the person proceeded against for any of the crimes or offences specified in this Treaty shall not be prolonged more than 3 months. At the expiration of that period, if the Government making the claim shall not have fulfilled the condition above stated, the prisoner shall be released, and shall not be liable to be rearrested on the same charge. Delay for production of evidence.

VII.—In the dominions of Her Britannic Majesty, other than the Colonies or foreign possessions of Her Majesty, the manner of proceeding in order to demand and obtain extradition, shall be as follows:— Proceedings on requisitions in the United Kingdom.

(a) In the case of a person accused—The requisition for the surrender shall be made to Her Britannic Majesty's Principal Secretary of State for Foreign Affairs by the Diplomatic Representative or Consul-General of the Oriental Republic of the Accused persons.

Uruguay. Uruguay. The said demand shall be accompanied by a warrant of arrest or other equivalent judicial document, issued by a Judge or Magistrate duly authorised to take cognizance of the acts charged against the accused in that Republic and duly authenticated depositions or statements taken on oath before such Judge or Magistrate, clearly setting forth the said acts, and containing a description of the person claimed, and any particulars which may serve to identify him.

The said Principal Secretary of State shall transmit such documents to Her Britannic Majesty's Principal Secretary of State for the Home Department, who shall then, by order under his hand and seal, signify to some Police Magistrate in London that such requisition has been made, and require him, if there be due cause, to issue his warrant for the apprehension of the fugitive. On the receipt of such order from the Secretary of State, and on the production of such evidence as would, in the opinion of the Magistrate, justify the issue of the warrant if the crime had been committed in the United Kingdom, he shall issue his warrant accordingly.

When the person claimed shall have been apprehended, he shall be brought before the Magistrate who issued the warrant, or some other Police Magistrate in London. If the evidence to be then produced shall be such as to justify, according to the law of England, the committal for trial of the prisoner, if the crime of which he is accused had been committed in the United Kingdom, the Police Magistrate shall commit him to prison to await the warrant of the Secretary of State for his surrender, sending immediately to the Secretary of State a certificate of the committal and a report upon the case.

After the expiration of a period from the committal of the prisoner, which shall never be less than 15 days, the Secretary of State shall, by order under his hand and seal, order the fugitive criminal to be surrendered to such person as may be duly authorised to receive him on the part of the Oriental Republic of the Uruguay.

**Convicted;
persons.**

(b) In the case of a person convicted—The course of proceeding shall be the same as above indicated, except that the warrant to be transmitted by the Diplomatic Representative or Consul-General of the Oriental Republic of the Uruguay in support of his requisition shall clearly set forth the crime or offence of which the person claimed has been convicted, and state the place and date of his conviction.

The evidence to be produced before the Police Magistrate shall be such as would, according to the law of England, prove that the prisoner was convicted of the crime charged. Uruguay.

(c) Persons convicted by judgment in default or *arrêt de contumace* shall be, in the matter of extradition, considered as persons accused, and, as such, be surrendered.

(d) After the Police Magistrate shall have committed the accused or convicted person to prison to await the order of a Secretary of State for his surrender, such person shall have the right to apply for a writ of *habeas corpus*; if he should so apply, his surrender must be deferred until after the decision of the Court upon the return to the writ, and even then can only take place if the decision is adverse to the applicant. In the latter case the Court may at once order his delivery to the person authorised to receive him, without the order of a Secretary of State for his surrender, or commit him to prison to await such order. *Habeas Corpus.*

VIII.—Warrants, depositions, or statements on oath, issued or taken in the dominions of either of the two High Contracting Parties, and copies thereof, and certificates of or judicial documents stating the fact of conviction, shall be received in evidence in proceedings in the dominions of the other, if purporting to be signed or certified by a Judge, Magistrate, or officer of the country where they were issued or taken, provided such warrants, depositions, statements, copies, certificates, and judicial documents are authenticated by the oath of some witness, or by being sealed with the official seal of the Minister of Justice or some other Minister of State. Evidence taken in claiming State to be admitted.

IX.—A fugitive criminal may be apprehended under a warrant issued by any Police Magistrate, Justice of the Peace, or other competent authority in either country, on such information or complaint, and such evidence, or after such proceedings as would, in the opinion of the authority issuing the warrant, justify the issue of a warrant if the crime had been committed or the person convicted in that part of the dominions of the two Contracting Parties in which the Magistrate, Justice of the Peace, or other competent authority exercises jurisdiction: Provided, however, that in the United Kingdom, the accused shall, in such case, be sent as speedily as possible before a Police Magistrate in London. He shall in accordance with this Article be discharged, as well in the United Kingdom as in the Oriental Republic of the Uruguay, if within the term of 60 days* a requisition shall not have been made for his surrender by the Diplomatic * altered from 30 days; Protocol, 20th March, 1981: *post.*, p. 259.

Uruguay.	or Consular Agent of his country in accordance with the stipulation of this Treaty.
Surrender by British Colonies.	<p>The same rule shall apply to the cases of persons accused or convicted of any of the crimes or offences specified in this Treaty, and committed on the high seas on board any vessel of either country which may come into a port of the other.</p> <p>X.—The stipulations of the present Treaty shall be applicable to the Colonies and foreign possessions of Her Britannic Majesty.</p> <p>The requisition for the surrender of a fugitive criminal who has taken refuge in any of such Colonies or foreign possessions may be made to the Governor or chief authority of such Colony or possession by the Chief Consular Officer of the Oriental Republic of the Uruguay in such Colony or possession.</p> <p>Such requisition may be disposed of, subject always, as nearly as may be, to the provisions of this Treaty, by the said Governor or chief authority, who, however, shall be at liberty either to grant the surrender or to refer the matter to his Government.</p> <p>Her Britannic Majesty shall, however, be at liberty to make special arrangements in the British Colonies and foreign possessions for the surrender of Uruguayan criminals who may take refuge within such Colonies and foreign possessions, on the basis, as nearly as may be, of the provisions of the present Treaty.</p>
No extradition if offence prescribed.	<p>XI.—The claim for extradition shall not be complied with if the individual claimed has been already tried for the same offence in the country whence the extradition is demanded, or if, since the commission of the acts charged, the accusation or the conviction, exemption from prosecution, or punishment, has been acquired by lapse of time, according to the laws of that country.</p>
Claims by several States.	<p>XII.—If the individual claimed by one of the two High Contracting Parties in pursuance of the present Treaty should be also claimed by one or several other Powers, on account of other crimes or offences committed upon their respective territories, his extradition shall be granted to that State whose demand is earliest in date.</p>
Trial for another offence pending, surrender postponed.	<p>XIII.—If the individual claimed should be under prosecution, or have been condemned for a crime or offence committed in the country where he may have taken refuge, his surrender may be deferred until he shall have been discharged in due course of law.</p>
Pendency of civil proceedings.	<p>In case he should be proceeded against or detained in such country, on account of obligations contracted towards private individuals, the extradition shall nevertheless take place.</p>

XIV.—Every article found in the possession of the individual claimed at the time of his arrest shall, if the competent authority so decide, be delivered up with his person at the time when the extradition takes place. Such delivery shall not be limited to the property or articles obtained by stealing or by fraudulent bankruptcy, but shall extend to everything that may serve as proof of the crime or offence, and shall take place even when the extradition, after having been granted, cannot be carried out by reason of the escape or death of the individual claimed.

Uruguay.

Articles seized.

The rights of third parties with regard to the said property or articles are nevertheless reserved.

XV.—The High Contracting Parties renounce any claim for the reimbursement of the expenses incurred by them in the arrest and maintenance of the person to be surrendered, and his conveyance as far as the frontier; they reciprocally agree to bear such expenses themselves.

Expenses.

XVI.—The present Treaty shall be ratified, and the ratifications shall be exchanged at Monte Vidio as soon as possible. It shall come into operation 10 days after its publication, in conformity with the laws of the respective countries, and each of the Contracting Parties may at any time terminate the Treaty on giving to the other 6 months' notice of its intention to do so.

Protocol, 20th March, 1891.

The period of 30 days fixed by Article IX of the Treaty for the Extradition of Criminals in force between the Oriental Republic of the Uruguay and Great Britain, for the provisional arrest of persons charged with any of the crimes or offences specified in the said Treaty, being thoroughly recognized as insufficient, both Governments agree that the said period shall henceforth be fixed at 60 days.

SUPPLEMENT.

SIAM.

THE 6th article of the treaty with Siam of 3rd September, 1883, provided for extradition between British Burmah and the neighbouring Siamese territories of Chiengmai, Lakon, and Lamphoonchi. This article does not appear to be affected by the Siam Order in Council of 28th June, 1909.

The article is as follows:—

VI.—If any persons accused or convicted of murder, robbery, dacoity, or other heinous crimes in any of the territories of Chiengmai, Lakon, and Lamphoonchi escape into British territory, the British authorities and police shall use their best endeavours to apprehend them. Such persons when apprehended shall, if Siamese subjects or subjects of any third Power, according to the extradition law for the time being in force in British India, be delivered over to the Siamese authorities at Chiengmai; if British subjects, they shall either be delivered over to the Siamese authorities, or shall be dealt with by the British authorities as the Chief Commissioner of British Burmah, or any officer duly authorised by him in this behalf, may decide.

If any persons accused or convicted of murder, robbery, dacoity, or other heinous crime in British territory, escape into Chiengmai, Lakon, or Lamphoonchi, the Siamese authorities and police shall use their best endeavours to apprehend them. Such persons when apprehended shall, if British subjects, be delivered over to the British authorities, according to the extradition law for the time being in force in Siam; if Siamese subjects, or subjects of any third Power not having treaty relations with Siam, they shall either be delivered over to the British authorities, or shall be dealt with by the Siamese authorities, as the latter may decide, after consultation with the Consul or Vice-Consul.

TONGA.

[Treaty of Friendship, 29th November, 1879. Protocol,
3rd July, 1882. O. in C. 30th November, 1882.]

II.—His Majesty the King of Tonga engages to grant to no other Sovereign or State any rights, powers, authority or privileges in Tonga in excess of those accorded to Her Britannic Majesty.

Most-favoured-nation treatment of British subjects.

The subjects of Her Britannic Majesty shall always enjoy in Tonga, and Tongan subjects shall always enjoy in the territories of Her Britannic Majesty whatever rights, privileges, and immunities they now possess, or which are now accorded to the subjects of the most favoured nation; and no rights, privileges, or immunities shall be granted hereafter in Tonga to the subjects of any foreign State which shall not equally and unconditionally be granted to the subjects of Her Britannic Majesty.

IV.—Her Britannic Majesty agrees to surrender to His Majesty the King of Tonga any Tongan subject who, being accused or convicted of any of the under-mentioned crimes, committed in the territory of the King of Tonga, shall be found within the territories of Her Britannic Majesty.

Agreement to surrender Tongan subjects.

The crimes for which surrender may be granted are the following;—

- Murder, or attempt to murder;
- Embezzlement or larceny;
- Fraudulent bankruptcy;
- Forgery.

Her Britannic Majesty may, however, at any time put an end to this article by giving notice to that effect to His Majesty the King of Tonga. The Article shall, however, remain in force for 6 months after the notice of its termination.

V.—The present Treaty shall come into force and effect from the date of the signature thereof, but shall again become null and void if not ratified within the prescribed period.

VI.—The present Treaty shall be ratified, and the ratifications exchanged at Nukualofa within 12 months from the date thereof.

Protocol, 3rd July, 1882,

to have the same force and validity as if it had been inserted in the body of the Treaty itself.

Tonga.Application of
Extradition Acts.

It is agreed that the arrangement contained in Article IV of the said Treaty shall be subject to the same restrictions on the surrender of fugitive criminals contained in the Acts respecting extradition which are in force in the dominions of Her Britannic Majesty, and the procedure to be adopted with respect to the surrender of such criminals shall be in conformity with the provisions of the said Acts.

TUNIS.

[Arrangement, 31st December, 1889. O. in C. 1st May, 1890.
Acts in force from 16th May, 1890. §]

Whereas a Treaty was concluded on the 14th August 1876, between Her Majesty and the President of the French Republic, for the mutual extradition of fugitive criminals, in the case of which Treaty the above-mentioned Acts of Parliament* were applied by an Order in Council of the 16th May, 1878:

* [*i.e.* the
Extradition
Acts].

And whereas an arrangement was concluded on the 31st December 1889, between the Government of Her Majesty and the Government of the French Republic, acting in the name of the Government of His Highness the Bey of Tunis, for extending the provisions of the said Treaty of August 14th 1876, to Tunis, which arrangement is in the terms following:—

Agreement to
extradite, subject
to French Treaty.

The Government of Her Britannic Majesty on the one part, and the Government of the French Republic, acting in the name of the Government of His Highness the Bey of Tunis, on the other part, with a view to insure as far as possible the arrest and delivery to the competent jurisdiction of criminals who seek to escape by flight from the action of justice, have agreed as follows:—

The provisions of the Anglo-French Convention of the 14th August, 1876, are extended to Tunis, except that the period of 14 days, stipulated by Article IX of the said Convention, is prolonged to 2 months.

The present arrangement shall have the same duration as the Convention of Extradition to which it relates.

§ This Arrangement should have followed the Treaty with France, but was accidentally omitted.

At the last minute I have discovered that this Canadian Statute, and also, I think, the Act of 1889 (p. 274), have been replaced by a new Statute, Chap. 155 of the Revised Statutes, (*see* Order in Council, p. 273). This statute will be printed separately, and every effort will be made to forward it in time to place in this volume.

F. T. P.

III.

SPECIAL EXTRADITION LEGISLATION.

CANADA.

An Act respecting the Extradition of Fugitive Criminals.

[Revised Statutes, c. 142].

HER MAJESTY, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

1. This Act may be cited as “The Extradition Act,” 40 Vict. Short title. c. 25, s. 25.
2. In this Act, unless the context otherwise requires:— Interpretation.
 - (a) The expression “extradition arrangement, or “arrangement,” means a treaty, convention or arrangement made by Her Majesty with a foreign State for the surrender of fugitive criminals, and which extends to Canada;
 - (b) The expression “extradition crime” may mean any crime which, if committed in Canada, or within Canadian jurisdiction, would be one of the crimes described in the first schedule to this Act,—and, in the application of this Act to the case of any extradition arrangement, means any crime described in such arrangement, whether comprised in the said schedule or not;
 - (c) The expressions “conviction” and “convicted” do not include the case of a condemnation under foreign law by reason of contumacy; but the expression “accused person” includes a person so condemned. The expressions “fugitive” and “fugitive criminal” mean a person being

My copies of the Canadian Acts had not arrived from Canada at the time of going to press. I have therefore ventured to take the text from the Appendix to Sir Edward Clarke's work on Extradition.

I have added such marginal notes as seemed necessary.

F. T. P.

Canada.

or suspected of being in Canada, who is accused or convicted of an extradition crime committed within the jurisdiction of any foreign state;

- (e) The expression "foreign State" includes every colony, dependency and constituent part of the foreign State; and every vessel of any such State shall be deemed to be within the jurisdiction of and to be part of the State;
- (f) The expression "warrant," in the case of a foreign State, includes any judicial document authorising the arrest of a person accused or convicted of crime;
- (g) The expression "Judge" includes any person authorised to act judicially in extradition matters. [40 Vict. c. 25, s. 1].

Application of
the Act.

3. In the case of any foreign State with which there is, at or after the time when this Act comes into force, an extradition arrangement, this Act shall apply during the continuance of such arrangement; but no provision of this Act, which is inconsistent with any of the terms of the arrangement, shall have effect to contravene the arrangement: and this Act shall be so read and construed as to provide for the execution of the arrangement:

- (2) In the case of any foreign State with respect to which the application to the United Kingdom of the Act of the Parliament of the United Kingdom passed in the year one thousand eight hundred and seventy, and intituled "An Act for amending the Law relating to the Extradition of Criminals," is made subject to any limitation, condition, qualification or exception, the Governor in Council shall make the application of this Act, by virtue of this section, subject to such limitation, condition, qualification or exception:
- (3) The Governor in Council may, at any time, revoke or alter, subject to the restrictions of this Act, any Order made by him in Council under this Act, and all the provisions of this Act with respect to the original Order shall, so far as applicable, apply *mutatis mutandis* to the new Order. [40 Vict. c. 25, s. 4].

4. This Act, so far as its application in the case of any foreign State, depends on or is affected by any Order in Council made under this Act or referred to therein, shall apply, or its application shall be affected from and after the time specified in the Order, or, if no time is specified, after the date of the publication of the Order in the *Canada Gazette*:

- (2) Any Order of her Majesty in Council, referred to in this Act, and any Order of the Governor in Council made under this Act, and any extradition arrangement not already published in the *Canada Gazette*, shall be, as soon as possible, published in the *Canada Gazette*, and laid before both Houses of Parliament: Canada.
- (3) The publication in the *Canada Gazette* of an extradition arrangement, or an Order in Council, shall be evidence of such arrangement or Order, and of the terms thereof, and of the application of this Act, pursuant and subject thereto; and the Court or Judge shall take judicial notice, without proof, of such arrangement or Order, and the validity of the Order and the application of this Act pursuant and subject thereto, shall not be questioned. [40 Vict. c. 25, s. 5].

5. All Judges of the Superior Courts and of the County Courts of any Province, and all commissioners who are, from time to time, appointed for the purpose, in any Province by the Governor in Council, under the Great Seal of Canada, by virtue of this Act, are authorised to act judicially in extradition matters under this Act, within the Province; and every such person shall, for the purposes of this Act, have all the powers and jurisdiction of any Judge or magistrate of the Province: Judges and Commissioners.

- (2) Nothing in this section shall be construed to confer on any Judge jurisdiction in *habeas corpus* matters. [40 Vict. c. 25, s. 8].

Extradition from Canada.

6. Whenever this Act applies, a Judge may issue his warrant for the apprehension of a fugitive on a foreign warrant of arrest, or an information or complaint laid before him, and on such evidence or after such proceedings as in his opinion would, subject to the provisions of this Act, justify the issue of his warrant if the crime of which the fugitive is accused or alleged to have been convicted had been committed in Canada: Issue of warrant.

- (2) The Judge shall forthwith send a report of the fact of the issue of the warrant, together with certified copies of the evidence and foreign warrant, information or complaint, to the Minister of Justice. [40 Vict. c. 25, s. 11].

7. A warrant issued under this Act may be executed in any part of Canada, in the same manner as if it had been originally Execution of warrant.

- Canada. issued, or subsequently indorsed, by a justice of the peace having jurisdiction in the place where it is executed. [40 Vict. c. 25, s. 10].
- Crimes committed before the arrangement. **8.** Every fugitive criminal of a foreign State, in the case of which State this Act applies, shall be liable to be apprehended, committed and surrendered in the manner provided in this Act, whether the crime or conviction, in respect of which the surrender is sought, was committed or took place before or after the date of the arrangement, or of the coming into force of this Act, or of the application of this Act in the case of such State, and whether there is or is not any criminal jurisdiction in any Court of Her Majesty's dominions over the fugitive, in respect of the crime. [40 Vict. c. 25, s. 7].
- Case to be heard as if fugitive charged in Canada. **9.** The fugitive shall be brought before a Judge, who shall, subject to the provisions of this Act, hear the case, in the same manner, as nearly as may be, as if the fugitive was brought before a justice of the peace, charged with an indictable offence committed in Canada :
- (2) The Judge shall receive upon oath, or affirmation if affirmation is allowed by law, the evidence of any witness tendered to shew the truth of the charge or the fact of the conviction ;
 - (3) The Judge shall receive, in like manner, any evidence tendered to shew that the crime of which the fugitive is accused or alleged to have been convicted is an offence of a political character, or is, for any other reason, not an extradition crime ; or that the proceedings are being taken with a view to prosecute or punish him for an offence of a political character. [40 Vict. c. 25, s. 12].
- Evidence taken abroad. **10.** Depositions or statements taken in a foreign State on oath, or on affirmation, where affirmation is allowed by the law of the State, and copies of such depositions or statements, and foreign certificates of, or judicial documents stating the fact of conviction, may, if duly authenticated, be received in evidence in proceedings under this Act :
- (2) Such papers shall be deemed duly authenticated, if authenticated in manner provided, for the time being, by law, or if authenticated as follows :
 - (a) If the warrant purports to be signed by, or the certificate purports to be certified by, or the depositions or statements, or the copies thereof, purport to be certified to be

the originals or true copies, by a Judge, magistrate or Canada.
officer of the foreign State;

- (b) And if the papers are authenticated by the oath of affirmation of some witness, or by being sealed with the official seal of the Minister of Justice, or some other Minister of the foreign State, or of a colony, dependency or constituent part of the foreign state; of which seal the Judge shall take judicial notice without proof. [40 Vict. c. 25, s. 9].

11. If, in the case of a fugitive alleged to have been convicted of an extradition crime, such evidence is produced as would, according to the law of Canada, subject to the provisions of this Act, prove that he was so convicted,—and if, in the case of a fugitive accused of an extradition crime, such evidence is produced as would, according to the law of Canada, subject to the provisions of this Act, justify his committal for trial, if the crime had been committed in Canada, the Judge shall issue his warrant for the committal of the fugitive to the nearest convenient prison, there to remain until surrendered to the foreign State, or discharged according to law; but otherwise the Judge shall order him to be discharged. [40 Vict. c. 25, s. 13].

Evidence subject
to law of Canada.

12. If the Judge commits a fugitive to prison, he shall, on such committal,—

Habeas corpus.

- (a) Inform him that he will not be surrendered until after the expiration of 15 days, and that he has a right to apply for a writ of *habeas corpus*; and—
- (b) Transmit to the Minister of Justice a certificate of the committal, with a copy of all the evidence taken before him, not already so transmitted, and such report upon the case as he thinks fit. [40 Vict. c. 25, s. 14].

13. A requisition for the surrender of a fugitive criminal of a foreign State who is, or is suspected to be in Canada, may be made to the Minister of Justice by any person recognised by him as a consular officer of that State resident at Ottawa—or by any Minister of that State communicating with the Minister of Justice through the Diplomatic Representative of Her Majesty in that State—or if neither of these modes is convenient, then in such other mode as is settled by arrangement. [40 Vict. c. 25, s. 15].

Requisitions.

14. No fugitive shall be liable to surrender under this Act if it appears,—

- Canada.**
- No surrender for political offences.**
- When surrender may be refused.**
- Surrender after 15 days from committal.**
- Existing trials and sentences to be completed.**
- Surrender.**
- Escape.**
- (a) That the offence in respect of which proceedings are taken under this Act is one of a political character; or—
- (b) That such proceedings are being taken with a view to prosecute or punish him for an offence of a political character. [40 Vict. c. 25, s. 6].
15. If the Minister of Justice at any time determines,—
- (a) That the offence in respect of which proceedings are being taken under this Act is one of a political character;
- (b) That the proceedings are, in fact, being taken with a view to try to punish the fugitive for an offence of a political character; or—
- (c) That the foreign State does not intend to make a requisition for surrender,—
- He may refuse to make an Order for surrender, and may, by order under his hand and seal, cancel any order made by him, or any warrant issued by a Judge under this Act, and order the fugitive to be discharged out of custody on any committal made under this Act; and the fugitive shall be discharged accordingly. [40 Vict. c. 25, s. 16;—45 Vict. c. 20, s. 1].
16. A fugitive shall not be surrendered until after the expiration of 15 days from the date of his committal for surrender; or if a writ of *habeas corpus* is issued, until after the decision of the Court remanding him:
- (2) A fugitive who has been accused of an offence within Canadian jurisdiction, not being the offence for which his surrender is asked, or who is undergoing sentence under a conviction in Canada, shall not be surrendered until after he has been discharged, whether by acquittal or by expiration of his sentence, or otherwise. [40 Vict. c. 25, s. 17].
17. Subject to the provisions of this Act, the Minister of Justice, upon the requisition of the foreign State, may, under his hand and seal, order a fugitive who has been committed for surrender to be surrendered to the person or persons who are, in his opinion, duly authorised to receive him in the name and on behalf of the foreign State, and he shall be so surrendered accordingly:—
- (2) Any person to whom such order is directed may deliver and the person so authorised may receive, hold in custody, and convey the fugitive within the jurisdiction of the foreign State; and if he escapes out of any custody to

which he is delivered, on or in pursuance of such Order, Canada.
 he may be retaken in the same manner as any person
 accused or convicted of any crime against the laws of
 Canada may be retaken on an escape. [40 Vict. c. 25.
 s. 18].

18. Everything found in the possession of the fugitive at the Articles seized.
 time of his arrest, which may be material as evidence in making
 proof of the crime, may be delivered up with the fugitive on his
 surrender, subject to all rights of third persons with regard
 thereto. [40 Vict. c. 25, s. 19].

19. If a fugitive is not surrendered and conveyed out of Fugitive to be
conveyed out of
Canada within
2 months.
 Canada within 2 months after his committal for surrender, or,
 if a writ of *habeas corpus* is issued, within 2 months after
 the decision of the Court on such writ, over and above, in either
 case, the time required to convey him from the prison to which
 he has been committed, by the readiest way out of Canada, any
 one or more of the Judges of the Superior Court of the Province
 in which such person is confined, having power to grant a writ
 of *habeas corpus*, may, upon application made to him or them by
 or on behalf of the fugitive, and on proof that reasonable notice
 of the intention to make such application has been given to the
 Minister of Justice, order the fugitive to be discharged out of
 custody, unless sufficient cause is shewn against such discharge.
 [40 Vict. c. 25, s. 20].

20. The forms set forth in the second schedule to this Act, Forms.
 or forms as near thereto as circumstances admit of, may be used
 in the matters to which such forms refer, and, when used, shall
 be deemed valid. [40 Vict. c. 25, s. 21].

Extradition from a Foreign State.

21. A requisition for the surrender of a fugitive criminal from Requisitions by
Canada.
 Canada, who is or is suspected to be in any foreign State with
 which there is an extradition arrangement, may be made by the
 Minister of Justice to a Consular Officer of that State resident
 at Ottawa, or to the Minister of Justice or any other Minister
 of Her Majesty in that State; or, if neither of these modes is
 convenient, then in such other mode as is settled by arrangement.
 [40 Vict. c. 25, s. 22].

22. Any person accused or convicted of an extradition crime, Fugitive to be
dealt with by
law on surrender.
 who is surrendered by a foreign State, may, under the warrant
 for his surrender issued in such foreign State, be brought into

Canada.

Trial after
surrender to be
limited to
extradition
offence.

Canada and delivered to the proper authorities, to be dealt with according to law.

23. Whenever any person accused or convicted of an extradition crime is surrendered by a foreign State, in pursuance of any extradition arrangement, such person shall not, until after he has been restored or has had an opportunity of returning to the foreign State within the meaning of the arrangement, be subject, in contravention of any of the terms of the arrangement, to any prosecution or punishment in Canada for any other offence committed prior to his surrender, for which he should not, under the arrangement, be prosecuted. [40 Vict. c. 25, s. 23].

List of Crimes.

24. The list of crimes in the first schedule to this Act shall be construed according to the law existing in Canada at the date of the alleged crime, whether by common law or by statute made before or after the passing of this Act, and as including only such crimes, of the descriptions comprised in the list, as are, under that law, indictable offences. [40 Vict. c. 25, second schedule, *part.*]

FIRST SCHEDULE.

List of Crimes.

- (1) Murder, or attempt or conspiracy to murder;
- (2) Manslaughter;
- (3) Counterfeiting or altering money, and uttering counterfeit or altered money;
- (4) Forgery, counterfeiting or altering, or uttering what is forged, counterfeited or altered;
- (5) Larceny;
- (6) Embezzlement;
- (7) Obtaining money or goods, or valuable securities, by false pretences;
- (8) Crimes against bankruptcy or insolvency law;
- (9) Fraud by a bailee, banker, agent, factor, trustee, or by a director or member officer of any company, which fraud is made criminal by any Act for the time being in force;
- (10) Rape;
- (11) Abduction;

Canada.

- (12) Child-stealing;
- (13) Kidnapping;
- (14) False imprisonment;
- (15) Burglary, house-breaking or shop-breaking;
- (16) Arson;
- (17) Robbery;
- (18) Threats, by letter or otherwise, with intent to extort;
- (19) Perjury or subornation of perjury;
- (20) Piracy by municipal law or law of nations, committed on board of or against a vessel of a foreign State;
- (21) Criminal scuttling or destroying such a vessel at sea, whether on the high seas or on the great lakes of North America, or attempting or conspiring to do so;
- (22) Assault on board such vessel at sea, whether on the high seas or on the great lakes of North America, with intent to destroy life or to do grievous bodily harm;
- (23) Revolt, or conspiracy to revolt, by two or more persons on board such a vessel at sea, whether on the high seas or on the great lakes of North America, against the authority of the master;
- (24) Any offence under either of the following Acts, and not included in any foregoing portion of this schedule:
 - (a) "*An Act respecting Offences against the Person.*"
 - (b) "*The Larceny Act.*"
 - (c) "*An Act respecting Forgery.*"
 - (d) "*An Act respecting Offences relating to the Coin.*"
 - (e) "*An Act respecting Malicious Injuries to Property.*"
- (25) Any offence which is, in the case of the principal offender, included in any foregoing portion of this schedule, and for which the fugitive criminal, though not the principal, is liable to be tried or punished as if he were the principal. [40 Vict. c. 25, second schedule, *part.*]

SECOND SCHEDULE.

FORM ONE.

Form of Warrant of Apprehension.

—;
To wit:

To all and each of the constables of

WHEREAS it has been shown to the undersigned, a Judge under "*The Extradition Act,*" that
late of _____ is accused (*or* convicted) of the
crime of _____ within the jurisdiction of _____

Canada.

This is therefore to command you, in Her Majesty's name, forthwith to apprehend the said _____ and to bring him before me, or some other Judge under the said Act, to be further dealt with according to law ; for which this shall be your warrant.

Given under my hand and seal at _____ this
day of _____ A. D.

FORM TWO

Form of Warrant of Committal.

—;

To wit :

To _____ one of the constables of
_____ and to the keeper of the
at _____

Be it remembered that on this _____ day of _____
in the year _____ at _____ is
brought before me _____ a Judge under " *The*
Extradition Act," _____ who has been
apprehended under the said Act, to be dealt with according to law ;
and forasmuch as I have determined that he should be surrendered
in pursuance of the said Act, on the ground of his being accused (*or*
convicted) of the crime of _____
within the jurisdiction of _____

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

Given under my hand and seal at _____ this
day of _____ A. D.

FORM THREE.

Form of Order of Minister of Justice for Surrender.

To the keeper of the _____ at _____
and to _____

WHEREAS _____ late of _____
accused (*or* convicted) of the crime of _____
within the jurisdiction of _____
was delivered into the custody of you, the keeper of the _____
at _____ by warrant
dated _____ pursuant to " *The Extradition Act.*"

Now I do hereby, in pursuance of the said Act, order you, the said Canada.
keeper, to deliver the said

into the custody of the said
; and I command you, the
said to receive the said into
your custody, and to convey him within the jurisdiction of the said
and there place him in
the custody of any person or persons (*or of*
) appointed by the said to
receive him: for which this shall be your warrant.

Given under the hand and seal of the undersigned Minister of
Justice of Canada, this day of A.D.
[40 Vict. c. 25, third schedule].

ORDER IN COUNCIL.

*Suspending the operation of the Extradition Acts within
Dominion of Canada so long as Part I of
Chapter 155 of "The Revised Statutes of Canada,
1906," shall continue in force.*

[6th July, 1907].

WHEREAS by the Extradition Acts, 1870 and 1906, it was amongst other things enacted that if, by any law made after the passing of the Act of 1870 by the Legislature of any British possession, provision is made for carrying into effect within such possession the surrender of fugitive criminals who are in, or suspected of being in, such British possession, His Majesty may, by the Order in Council applying the said Acts in the case of any foreign State, or by any subsequent Order, suspend the operation within any such British possession of the said Acts or any part thereof so far as it relates to such Foreign State, and so long as such Law continues in force there and no longer.

And whereas by Part I of Chapter 155 of the Revised Statutes of Canada, being an Act of the Parliament of Canada intituled "An Act respecting the Extradition of Criminals," provision is made for carrying into effect within the Dominion the surrender of fugitive criminals:

Now, therefore, His Majesty, by and with the advice of Her Privy Council, and in virtue of the authority committed to Her by the said recited Acts, doth order, and it is hereby ordered, that the operation of the Extradition Acts, 1870 and 1906 shall be suspended within the Dominion of Canada so long as Part I of Chapter 155 of "The Revised Statutes of Canada, 1906," shall continue in force and no longer.

Canada. 52 VICT. c. 36.

An Act to extend the provisions of the Extradition Act.

[Assented to 2nd May, 1889].

WHEREAS it is expedient to make further provision for the extraditions from Canada of fugitive offenders from foreign States:

Therefore Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

Extradition to foreign State where no arrangement exists.

1. In case no extradition arrangement within the meaning of "The Extradition Act," exists between Her Majesty and a foreign State, or in case such an extradition arrangement extending to Canada exists between Her Majesty and a foreign State, but does not include the crimes mentioned in the schedule to this Act, it shall, nevertheless be lawful for the Minister of Justice to issue his warrant for the surrender to such foreign State of any fugitive offender from such foreign State charged with or convicted of any of the crimes mentioned in the schedule to this Act; Provided always, that the arrest, committal, detention, surrender and conveyance out of Canada of such fugitive offender shall be governed by the provisions of "The Extradition Act," and that all the provisions of the said Act shall apply to all steps and proceedings in relation to such arrest, committal, detention, surrender and conveyance out of Canada in the same manner and to the same extent as they would apply if the said crimes were included and specified in an extradition arrangement between Her Majesty and the foreign State extending to Canada.

Expenses.

2. All expenses connected with the arrest, committal, detention, surrender, and conveyance out of Canada of any fugitive offender under this Act shall be borne by the foreign State applying for the surrender of such fugitive offender.

Extradition offences.

3. The list of crimes in the schedule to this Act shall be construed according to the law existing in Canada at the date of the commission of the alleged crime, whether by common law or by statute made before or after the coming into force of this Act, and as including only such crimes, of the description comprised in the list, as are under that law indictable offences:

- (2) The provisions of this Act shall apply to any crime mentioned in the said schedule, committed after the coming into force of this Act, as regards any foreign State as hereinafter provided.

4. The foregoing provisions of this Act shall not come into force, with respect to fugitive offenders from any foreign State, until this Act shall have been declared by Proclamation of the Governor-General to be in force and effect as regards such foreign State, from and after a day to be named in such Proclamation; and the provisions of this Act shall cease to have any force or effect with respect to fugitive offenders from any foreign State, if by Proclamation the Governor-General declares this Act to be no longer in operation as regards such foreign State:

Canada.
Proclamation.

- (2) The day from and after which, in such case, the provisions of this Act shall cease to have force and effect shall be a day to be named in such Proclamation.

5. This Act shall not authorise the issue of a warrant for the extradition of any person under the provisions of this statute, to any State or country in which by the law in force in such State or country, such person may be tried after such extradition for any other offence than that for which he has been extradited, unless an assurance shall first have been given by the executive authority of such State or country, that the person whose extradition has been claimed shall not be tried for any other offence than that on account of which such extradition has been claimed.

Trial after
surrender to be
limited to
extradition
offence.

SCHEDULE.

- (1) Murder or attempt or conspiracy to murder;
- (2) Manslaughter;
- (3) Counterfeiting or altering money and uttering counterfeit or altered money;
- (4) Forgery, counterfeiting or altering or uttering what is forged, counterfeited or altered;
- (5) Larceny;
- (6) Embezzlement;
- (7) Obtaining money or goods or valuable securities by false pretences;
- (8) Rape;
- (9) Abduction, indecent assault;
- (10) Child stealing;
- (11) Kidnapping;
- (12) Burglary, house breaking or shop breaking;

Canada.

- (13) Arson;
- (14) Robbery;
- (15) Fraud committed by a bailee, banker, agent, factor, trustee or member or public officer of any company or municipal corporation, made criminal by any law for the time being in force;
- (16) Any malicious act done with intent to endanger persons in a railway train;
- (17) Piracy by municipal law or law of nations, committed on board of or against a vessel of a foreign State.
- (18) Criminal scuttling or destroying such a vessel at sea whether on the high seas or on the great lakes of North America, or attempting or conspiring to do so;
- (19) Assault on board such a vessel at sea, whether on the high seas or on the great lakes of North America, with intent to destroy life or to do grievous bodily harm;
- (20) Revolt or conspiracy to revolt, by two or more persons on board such a vessel at sea, whether on the high seas or on the great lakes of North America, against the authority of the master;
- (21) Administering drugs or using instruments with intent to procure the miscarriage of a woman;
- (22) Any offence which is, in the case of the principal offender, included in any foregoing portion of this schedule, and for which the fugitive criminal though not the is liable to be tried or punished as if he were the principal principal.

CYPRUS.

The Cyprus Extradition Order in Council, 1881.

[15th July, 1881].

WHEREAS, by treaty, grant, usage, sufferance, and other lawful means, Her Majesty the Queen has power and jurisdiction in and over Cyprus:

Now, therefore, Her Majesty, by virtue of the powers in this behalf by the Foreign Jurisdiction Acts, 1843 to 1878, or otherwise, in Her Majesty, vested, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

1. This Order may be cited as “The Cyprus Extradition Order in Council, 1881.”

EXTRADITION FROM CYPRUS.

A.—*General power.*

2.—(a) In the circumstances and under the conditions in this Order appearing and prescribed, persons found in Cyprus, and accused or convicted of offences committed in foreign countries, or in any part of the Ottoman dominions other than Cyprus, shall be given up to the respective Governments of those countries, or to the Ottoman Government,* as the case may be, for trial there, or, in the case of persons so convicted, for the purpose of undergoing lawful punishment for the offences of which they were so convicted.

Surrender of fugitive.

* *cf. O. in C. 1895, post, p. 287.*

(b) In every case the offence must be an offence which, if committed within British jurisdiction, would be an offence in the first schedule to this Order; and every such offence is in this Order referred to as a scheduled offence.

(c) The list of scheduled offences shall be construed according to the law of Cyprus, relating to British subjects, as that law existed, in case of an offence committed before the British occupation of Cyprus, at the date of this Order; and as that law existed, in case of an offence committed since that occupation, at the date of the alleged offence, whether the same existed at common law, or under statute or ordinance made before or after the passing of this Order.

B.—*Persons accused.*

3.—(a) If a person, being or being alleged to be in Cyprus, is alleged to be a fugitive from a foreign country, or from any part of the Ottoman dominions other than Cyprus, and to be under prosecution there for a scheduled offence; and

Request to High Commissioner.

(b) If a request for his extradition is made to the High Commissioner by the Government of that foreign country, or by the Ottoman Government, through a person recognised by the High Commissioner as a consular or other officer of the requesting Government, authorised in that behalf; and

(c) If the request is accompanied (i) by a warrant of arrest or other equivalent judicial document, issued by a Judge, magistrate, or other person lawfully exercising jurisdiction in the country from which the person whose extradition is sought is alleged to be a fugitive, and (ii) by depositions or statements taken or

- Cyprus. made on oath or affirmation before such a Judge or magistrate, and authenticated as prescribed by this Order, clearly stating those acts, and containing a description of the person claimed, and any particulars that may serve to identify him;
- (d) The High Commissioner may, if he thinks fit, signify the request to the High Court.
- Warrant of High Court. 4. Thereupon, and on such evidence being adduced as would, in the judgment of the High Court, justify the issue of a warrant for the apprehension of a British subject charged before it with an indictable offence, the Court may, if it thinks fit, issue a warrant for the apprehension, for purposes of this Order, of the fugitive.
- Jurisdiction of Court. 5. On and after the issue of the warrant, as well before as after the fugitive is brought before the High Court thereon, the Court shall have the like jurisdiction and powers as in case of a British subject charged before it with an indictable offence.
- Foreign evidence. 6.—(a) Foreign or Ottoman depositions and statements* taken or made on oath or affirmation, and copies thereof, and foreign or Ottoman warrants or other judicial instruments authorising apprehension,* and foreign or Ottoman certificates of conviction or judicial instruments stating a conviction,* shall be receivable in evidence under this Order, if authenticated, to the satisfaction of the High Court, in manner provided by law independently of this Order, or in manner following:—
- (i) If the depositions, statements, or copies purport to be certified as originals or as true copies by a Judge, magistrate or officer of the country where they were taken; or
- (ii) If the warrant, certificate, or judicial instrument purports to be signed by a Judge, magistrate, or officer of the country where it was issued; and
- (iii) If every deposition, statement, copy, warrant, certificate, or judicial instrument is proved by the oath of a witness, or is sealed with the official seal of the Minister of Justice, or other Minister of State of the country where it was taken or issued; for which purpose judicial notice shall be taken of that seal.
- (b) Such depositions and statements shall be receivable in evidence, whether they are taken or made in the particular charge or not, or in the presence of the person charged or not.
- Fugitive may give evidence. 7. The fugitive shall not be liable to interrogation by or before the High Court; but he may, if he thinks fit, tender himself to

* *cf.* O. in C. 1895, *post*, p. 287.

be sworn and examined as a witness on his own behalf; and thereupon he may give evidence in the same manner, and with the like effect and consequences, as regards cross-examination and perjury and otherwise, as any other witness. Cyprus.

8.—(a) If the High Court is satisfied that the person brought before it is a fugitive, as alleged; and Committal for extradition.

(b) If the foreign or Ottoman warrant or other judicial instrument authorising his apprehension is authenticated as required by this Order; and

(c) If such evidence is adduced as, subject to the provisions of this Order, would, in the judgment of the Court, justify a committal for trial if the fugitive had been a British subject, and the offence of which he is accused had been committed in Cyprus;

(d) The Court shall commit the fugitive to prison, for extradition: but, otherwise, shall discharge him from custody.

C.—Persons convicted.

9.—(a) If a person, being or alleged to be in Cyprus is alleged to be a fugitive from a foreign country, or from any part of the Ottoman dominions other than Cyprus, and to have been convicted there of a scheduled offence; and Application of foregoing provisions to persons convicted.

(b) If a request is made for his extradition in manner aforesaid;

(c) The course of proceeding shall be as prescribed in the foregoing provisions of this Order; except that—

(i) The judicial documents accompanying the request shall clearly state the offence, and the place and time of conviction; and

(ii) The evidence to be adduced before the High Court shall be such as, in the judgment of the Court, [is sufficient]* to prove the fact of conviction.

* [These words probably omitted in S. R. & O. Vol. 5].

D.—Persons accused or convicted.

10.—(a) A person committed for extradition under this Order shall have a right to apply to the High Court for a writ of *habeas corpus*, or an Order in the nature thereof. Habeas corpus.

(b) If he so applies, he shall not be given up before the decision of the Court on the return to the writ or order.

11. On the committal, the High Court shall inform the fugitive that he will not be given up before the expiration of 15 days from committal, and that he may, at any time before he is given up, Proceedings on committal.

Cyprus.

apply to the Court for a writ of *habeas corpus*, or an order in the nature thereof; but the fugitive may then and there waive his right so to apply, and in that case he may be given up before the expiration of that time.

Report from Court.

12. On committal, the Court shall forthwith send to the High Commissioner a certificate thereof and of such waiver as aforesaid (if any), and such a report on the case as the Court thinks fit.

Order for extradition.

13. Where a fugitive is committed for extradition, the High Commissioner, after the expiration of the time limited in this behalf by this Order, or sooner, in case of such a waiver as aforesaid, may, if he thinks fit, issue an order directing that the fugitive be given up to a person therein described, being, in the High Commissioner's opinion, authorised to receive the fugitive on behalf of the requesting Government.

Removal from Cyprus.

14.—(a) The person to whom the fugitive is by such Order directed to be given up may receive the fugitive in Cyprus, and hold him in custody there, and convey him out of Cyprus.

(b) The High Commissioner shall cause all lawful and reasonable assistance in that behalf to be afforded to that person.

(c) If the fugitive escapes in Cyprus out of the custody of that person, he may be retaken as a British subject may be retaken in Cyprus on an escape.

Property in possession of fugitive.

15. Everything found in the possession of the fugitive on his apprehension, including not only property obtained by him by fraudulent bankruptcy, or otherwise unlawfully, but also everything that may serve as evidence of the offence in question, shall, if the High Court thinks fit, be seized, and, saving the rights of third parties, be given up either with the fugitive on his extradition, or without him if, by reason of his escape or death, the extradition, though granted, cannot be carried into effect.

E.—Restrictions on extradition.

Political offences.

16. A fugitive shall not be given up if the offence in question is, in the judgment of the High Commissioner, or of the High Court, of a political character.

17. If at any time during the proceedings for extradition, it is shewn to the satisfaction of the High Commissioner that the offence in question is of a political character,—or that the request for extradition is made with a view to the trial or punishment of the fugitive for an offence of a political character, the High Commissioner shall refrain from signifying the request

to the High Court, or shall issue an order directing that the fugitive be discharged from custody (as the case may require).

Cyprus.

18. The High Court shall, at any time during the proceedings for extradition, receive any evidence tendered to shew that the offence in question is of a political character, or that the request for extradition is made with a view to the trial or punishment of the fugitive for an offence of a political character, and if, by that evidence or otherwise, the Court is, at any time during the proceedings for extradition, satisfied that the offence is of that character, or that the request is made with that view, the Court shall refrain from issuing a warrant for the apprehension of the fugitive, or shall discharge him from custody (as the case may require).

19. A fugitive shall not be given up, except on such waiver as aforesaid, before the expiration of 15 days from his committal for extradition. Limitation of time.

20. If a fugitive committed for extradition is not given up and conveyed out of Cyprus within 2 calendar months from the committal, or from the decision against him on the return of a writ of *habeas corpus* or of an order in the nature thereof, then, on application to the Court by him or on his behalf, at any time after the expiration those 2 months, and on proof of reasonable notice of the application having been given to the High Commissioner, the Court may, if it thinks fit, order that, unless good cause be shewn to the contrary, within a time limited by the Court, the fugitive be discharged from custody; and the Court may afterwards, if it thinks fit, discharge him from custody accordingly.

21. A fugitive shall not be given up unless the High Commissioner is satisfied that provision is made by the law of the country of the requesting Government, or by lawful arrangement with that Government to the effect that the fugitive shall not be detained or tried in that country for any offence committed there before his extradition, other than a scheduled offence proveable by the facts on which his extradition is grounded, unless and until he has been restored, or had a reasonable opportunity of returning, to a place within British jurisdiction. Trial for offence in question only.

22. A fugitive shall not be given up if he has been tried in Cyprus for the offence in question, or is under prosecution there for that offence. Pending trial in Cyprus for same offence.

23. A fugitive shall not be given up if, any time during the proceedings for his extradition, it is shewn to the satisfaction of Prescription of offence in

- Cyprus. High Court, that since the commission of the offence in question, he has, according to the law of the country of the requesting country, acquired, by lapse of time or otherwise, exemption from prosecution or punishment in that country for the offence in question.
- Pending trial in Cyprus for another offence. 24. A fugitive who is under prosecution in Cyprus for an offence other than that in question, or who is undergoing in Cyprus punishment under a conviction there for an offence other than that in question, shall not be given up before he has been lawfully discharged in respect of that prosecution or conviction, by acquittal, or on expiration of his term of punishment, or otherwise.
- F.—*General application of foregoing provisions.*
- Concurrent jurisdiction. 25. This Order applies whether the offence in question was committed before or after the passing of this Order.
26. This Order applies whether there is or is not concurrent jurisdiction in any Court in Cyprus in relation to the offence in question.
- Pendency of civil proceedings. 27. A fugitive is liable to be given up, notwithstanding the existence of any civil obligations contracted by him in Cyprus or any detention or proceedings there, which he is undergoing, or to which he may be subject, in consequence of such obligations.
- Colonies. 28. For purposes of this Order, every colony, dependency, and constituent member of a country, and every vessel of that country, is part of that country, and every vessel of any part of the Ottoman dominions, other than Cyprus, is part of those dominions.
- Subjects. 29. This Order applies whether the fugitive is or is not an Ottoman subject or a British subject.
- Accessories. 30. For [the] purposes of this Order a fugitive accused or convicted of having counselled, procured, commanded, aided, or abetted, the commission of an offence, or of having been accessory thereto, before or after the fact, is a fugitive accused or convicted (as the case may be) of having committed that offence, provided that such counselling, procuring, commanding, aiding or abetting, or being accessory, would be an indictable offence if committed by a British subject in Cyprus, and would also be punishable as an offence by the law of the country of the requesting Government.
- Conviction *par contumace.* 31. For purposes of this Order, a foreign conviction by default, or on contumacy, is an accusation only, and not a conviction.

G.—*Apprehension in anticipation of request.*

Cyprus.

32. Where it is shewn to the satisfaction of the High Court that there are reasonable grounds for believing that a person who is in Cyprus is a fugitive from a foreign country, or from some part of the Ottoman dominions other than Cyprus, and is accused or has been convicted of a scheduled offence committed there, and that a request is about to be made for his extradition, the Court may, if it thinks fit, issue a warrant for his apprehension, and for his being brought before the Court, with a view to his detention until reasonable opportunity for a request has been given; and, thereupon, the Court may, if it thinks fit, either remand him to custody for a reasonable time, and so from time to time, or at any time, discharge him from custody.

H.—*General.*

33. In all proceedings relating to extradition the High Court shall act by the Judicial Commissioner. Judicial Commissioner.

34. At any time during proceedings for extradition, the High Commissioner or the High Court shall receive any evidence tendered to shew that the offence in question is not a scheduled offence. Evidence to show offence not in schedule.

35. A person committed for extradition shall at all time during the proceedings for his extradition be treated in custody in the manner in which a British subject, charged before the High Court with an indictable offence, is entitled by law to be treated in custody during a remand. Treatment after committal.

36. Every Order of the High Commissioner under this Order shall be obeyed and acted on by the High Court, and by all keepers of prisons, constables, and others without question. Orders of High Commissioner.

37. Every request for extradition, and every signification, warrant, certificate, and order under this Order shall be in writing, signed by the person making or issuing the same, or some other person lawfully authorised in that behalf, and sealed in the case of an instrument made or issued by the High Commissioner, with his official seal, and in case of an instrument issuing from the High Court, with the seal of the Court. Writing; signature; seal.

38. The forms in the Second Schedule to this Order may be used, with variations and additions according to circumstances, in cases to which those forms refer, and when so used shall be valid and sufficient in law. Forms.

Cyprus.

EXTRADITION TO CYPRUS.

Warrant.

39.—(a) With a view to a request to be made by the High Commissioner to a foreign Government or to the Ottoman Government for the extradition of a fugitive, the High Court may, if it thinks fit, on a suggestion on behalf of the High Commissioner, and on a sworn information, issue its warrant for the apprehension in Cyprus of the fugitive.

(b) But the High Court shall not so issue its warrant if it appears to the Court that the offence in question is of a political character, and the Court shall receive any evidence tendered in that behalf.

(c) The High Court may also, if it thinks fit, from time to time, as well after as before the issue of the warrant, take and certify any supplementary evidence tendered in aid of the proceedings for obtaining the extradition.

[s. 40, *rep.* O. in C. 1895; for ss. 1, 2, *see* p. 286].

Political offences.

3. In case of the extradition of any person to Cyprus by the Government of a foreign country or by the Ottoman Government he shall not be triable or punishable in Cyprus for an offence of a political character.

Trial for extradition offence only.

4. In the case of the extradition of any person to Cyprus by the Government of a foreign country he shall not be triable in Cyprus for any offence committed within British jurisdiction before his extradition, other than a scheduled offence proveable by the facts on which the extradition is grounded, unless and until he has been restored to the country by whose Government he was given up, or has had, in the judgment of the High Commissioner, reasonable opportunity of returning thereto.

Taking evidence for foreign prosecution.

41.—(a) Where it is shewn to the satisfaction of the High Commissioner that a criminal prosecution is pending before a foreign Court, or a Court in any part of the Ottoman dominions other than Cyprus, he may, if he thinks fit, issue an order requiring the High Court to take evidence for the purposes thereof, provided that he is satisfied that the offence in question is not of a political character, and that the evidence is not sought with a view to the trial or punishment of any person for an offence of a political character.

(b) Thereupon, the Court shall take the evidence of every witness appearing, as on a charge before the Court of an indictable offence, and shall certify at the foot of the depositions or

informations that they were so taken; save that the evidence may be taken in the absence of the person, if any, charged, and the fact of his presence, or of his absence, shall appear on the depositions or informations.

Cyprus.

(c) For that purpose any person in Cyprus, after payment on* ^{* [sic: read or]} tender to him of a reasonable sum for his expenses, shall be compellable to appear, and give evidence, and produce documents, as on a charge before the Court of an indictable offence.

(d) The Court shall send the depositions or informations to the High Commissioner, with such a report, if any, on the case, as the Court thinks fit.

(e) If any person wilfully gives false evidence under this article he shall be guilty of perjury.

42. The Fugitive Offenders Act, 1843,† or so much thereof as is for the time being in force, and any enactment for the time being in force, amending or substituted for the same, are hereby extended to Cyprus with the following adaptations, namely:—

Application to
Cyprus of
Fugitive
Offenders Act.

(a) In sections 2 and 6† of the Fugitive Offenders Act, 1843, [6 & 7 Vict. c. 34.]† the High Court of Justice, acting by the Judicial Commissioner, shall be deemed to be substituted for a Judge of a Superior Court in a Colony.

(b) In sections 3, 5 and 6† of the same Act, the High Commissioner shall be deemed to be substituted for the Governor of a colony.

THE FIRST SCHEDULE.

List of Offences.

Murder, and attempt and conspiracy to murder.

Manslaughter.

Counterfeiting and altering money, and uttering counterfeit or altered money.

Forgery, counterfeiting, and altering, and uttering what is forged or counterfeited or altered.

Embezzlement and larceny.

Obtaining money or goods by false pretences.

† The Fugitive Offenders Act, 1881, (44 & 45 Vict. c. 69), was passed the month following the issue of this Order in Council. The substitutions indicated in paras. (a) and (b) in cl. 42, may be made throughout the Act of 1881.

Cyprus.

Offences by bankrupts against bankruptcy law, or any indictable offence under the laws relating to bankruptcy.

Fraud by a bailee, banker, agent, factor, trustee, or director, or member, or public officer of any company, made criminal by any Act of Parliament or Ordinance for the time being in force.

Rape.

Abduction.

Child-stealing.

Burglary or house-breaking.

Arson.

Robbery with violence.

Threats by letter or otherwise with intent to extort.

Piracy by [the] law of nations.

Sinking or destroying a vessel at sea, or attempting or conspiring to do so.

Assault on board a ship on the high seas with intent to destroy life or to do grievous bodily harm.

Revolt, or conspiracy to revolt, by two or more persons on board a ship on the high seas against the authority of the master.

cf. p. 147.

Offences against the Slave Trade Act, 1873, or otherwise in connexion with the slave trade, committed on the high seas or on land, or partly on the high seas and partly on land.

Kidnapping or false imprisonment.

Perjury and subornation of perjury.

Any offence not before mentioned, being an indictable offence under the following Acts of Parliament of 1861, or any of them, or under any Act amending or substituted for the same ;—

cf. Chap. III,
Sec. VIII.

24 & 25 Vict. c. 96,—Larceny.

24 & 25 Vict. c. 97,—Malicious Injuries to Property.

24 & 25 Vict. c. 91,—Forgery.

24 & 25 Vict. c. 99,—False coining.

24 & 25 Vict. c. 100,—Murder and other offences against the person.

The forms in the Second Schedule are based on those of the English Extradition Act, 1870.

The Cyprus Extradition Order in Council, 1895.

[8th March, 1895.]

1. This Order may be cited as "The Cyprus Extradition Order in Council, 1895," and shall be construed as one with the Cyprus Extradition Order in Council 1881.

2. Section 40 of the Cyprus Extradition Order in Council 1881, is hereby repealed.

[for ss. 3, 4, see p. 284].

The Cyprus Extradition Order in Council, 1895, No. 2.

Cyprus.

[12th December, 1895].

1. This Order may be cited as the Cyprus Extradition Order in Council, 1895, No. 2, and shall be construed as one with the Cyprus Extradition Order in Council, 1881, and the Cyprus Extradition Order in Council, 1895.

2. In the Cyprus Extradition Orders in Council, 1881 and 1895, the expression "the Ottoman Government" shall be taken to include the Government of any autonomous or semi-autonomous State within the dominion of the Sultan of Turkey.

3. In the Cyprus Extradition Order in Council, 1881, the expressions "Ottoman depositions or statements," "Ottoman warrants or other judicial instruments authorising apprehension," and "Ottoman certificates or judicial instruments stating a conviction," shall be taken to include depositions or statements taken or made, and warrants, certificates, or judicial instruments issued in any part of the Ottoman dominions.

HONG KONG.

AN ORDINANCE to amend the law relating to the
Extradition of Chinese Criminals.

[3rd July, 1889].

No. 26 of 1889. REVISED NUMBER, **No. 7 of 1889.**§

WHEREAS by Article XXI of the Treaty between Her Majesty and the Emperor of China done at Tientsin on the 26th June, 1858, it was agreed and concluded that if criminals, subjects of China, shall take refuge in Hong Kong, or on board the British ships there they shall, upon due requisition by the Chinese authorities, be searched for, and on proof of their guilt, be delivered up; AND WHEREAS it is expedient to amend the law for the more effective carrying out of the said treaty in relation to the surrender of criminals, subjects of China, who take refuge in Hong Kong or on board the British ships there:—

1. This Ordinance may be cited for all purposes as the Short title. Chinese Extradition Ordinance, 1889.

[2. Ordinances No. 2 of 1850 and No. 2 of 1871 are hereby Omitted in Rev. Ed. repealed, but such repeal shall not affect anything done or

§ The text is given as in the Revised Edition.

- Hong Kong. suffered or any proceedings for the surrender of a criminal commenced under the said Ordinances or either of them before the coming into operation of this Ordinance and such proceedings may be completed and the criminal surrendered as if this Ordinance had not come into operation].
- Interpretation of terms.** 2. In this Ordinance, unless the context otherwise requires,—
 “extradition crime” means a crime which, if committed in the Colony, would be one of the crimes mentioned in the first schedule to this ordinance:
 “Fugitive criminal” means any subject of China accused of an extradition crime committed within the jurisdiction of China or on board a Chinese ship on the high seas, who is or is suspected of being in Hong Kong or on board a British ship there:
 The crimes mentioned in the said schedule shall be construed according to the law in force in the Colony at the date of the alleged crime.
- Ord. No. 5 of 1908.** “Chinese Government” includes the Viceroy or other officer administering a Provincial Government.
- Application of the Ordinance.** 3. The provisions of this Ordinance shall apply to the surrender of criminals under any future arrangement that may be made by Her Majesty with the Emperor of China with respect to the surrender of fugitive criminals, as well as to their surrender under any treaty in force at the coming into operation of this Ordinance.
- Restrictions on surrender of fugitive criminal.** 4. The following restrictions shall be observed with respect to the surrender of fugitive criminals:—
- (1) A fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded is one of a political character or if he proves, to the satisfaction of the magistrate, or of a Judge of the Supreme Court, if brought before the Court on a writ of *habeas corpus*, or of the Governor, that the requisition for his surrender has in fact been made with a view to try or punish him for an offence of a political character or for an offence which is not an extradition crime;
 - (2) A fugitive criminal, who has been accused of an offence within British jurisdiction, not being an offence for which his surrender is demanded, or who is undergoing sentence under any conviction in the Colony, shall not be surrendered until he has been discharged, whether by acquittal or on expiration of his sentence or otherwise; and

- (3) A fugitive criminal shall not in any case be surrendered Hong Kong. unless an engagement is given by the Chinese Government that he shall not, until he has been restored or had an opportunity of returning to Her Majesty's Dominions, be detained or tried in China for any offence committed before his surrender other than the extradition crime on which the surrender is demanded.
5. Every fugitive criminal who is in the Colony, shall be liable to be apprehended and surrendered in manner provided by this Ordinance, whether the crime in respect of which the surrender is demanded was committed before or after the passing of this Ordinance, and whether there is or is not any concurrent jurisdiction in any Court in the Colony over that crime. Liability of fugitive criminal to be surrendered.
6. Whenever a requisition for the surrender of a fugitive criminal who is in or suspected of being in the Colony, is made to the Governor by some officer of the Chinese Government, the Governor may, by order under his hand and seal, signify to a magistrate that such requisition has been made, and require him to issue his warrant for the apprehension of the fugitive criminal. Requisition to Governor and order to magistrate for warrant of apprehension.
7. A magistrate, on receipt of the said order, shall issue his warrant for the apprehension of the fugitive criminal, or, if the fugitive criminal be already in custody, shall issue his order to all necessary persons to bring the fugitive criminal before him to be dealt with according to this Ordinance. Duty of magistrate on receipt of order.
- 8.—(1) A magistrate may also issue his warrant for the apprehension of a fugitive criminal on such information or complaint as would, in his opinion, justify the issue of a warrant if the crime had been committed in the Colony. Power to issue warrant as in ordinary case
- (2) A fugitive criminal apprehended on a warrant so issued shall be discharged by the magistrate, unless the magistrate, within such time as, with reference to the circumstances of the case, he may think reasonable, receives from the Governor an order signifying that a requisition has been made for the surrender of such fugitive criminal.
- 9.—(1) When a fugitive criminal is brought before a magistrate, the magistrate shall hear the case in the same manner and have the same jurisdiction and powers, as nearly as may be, as if the prisoner were brought before him charged with an indictable offence committed in the Colony. Provided always that— Procedure on fugitive criminal being brought before magistrate.

Hong Kong.

[introduced by
Ord. No. 23
of 1897].

- (a) in any case where the extradition crime alleged is murder, manslaughter, piracy, burglary, house-breaking, or robbery with violence, and the accused person has not resided in the Colony more than 6 months during the period of 12 months immediately prior to the date of his being so brought before the magistrate, the magistrate may receive in evidence copies of any such depositions relating to the charge as purport to have been taken in China in the presence of a British Consular Officer, and are accompanied by a certificate by such officer, that such copies are true copies of the originals and that the original depositions have been respectively read over to the respective deponents, that they respectively appeared to understand the same, and that, to the best of such officer's belief, no compulsion had been used in obtaining such depositions;
- (b) translations in English of such depositions, if certified by such British Consular Officer to be correct translations, may accompany the certified copy of the depositions, and in such case such translations may be received in evidence in the same manner as the originals;
- (c) any copies of depositions received in evidence or, if necessary, a translation thereof, shall be read over to the fugitive criminal if he so desires, and he shall be asked if he has any valid cause to show why he should not be committed to gaol to await the order of the Governor;
- (d) the burden of proof that a fugitive criminal has resided in this Colony more than 6 months, during the period mentioned in clause (a) of this proviso, shall lie upon such fugitive criminal; and
- (e) in every case proof of the identity of the fugitive criminal must be given to the satisfaction of the magistrate.

(2) The magistrate shall receive any evidence which may be tendered to show that the crime of which the prisoner is accused is an offence of a political character or is not an extradition crime.

10.—(1) If at the hearing before a magistrate, such evidence is produced as would, subject to the provisions of this Ordinance, justify the committal of the fugitive criminal for trial at the Supreme Court if the crime of which he is accused had been committed in the Colony, the magistrate shall commit him to Victoria Gaol to await the further order of the Governor, but otherwise shall order him to be discharged.

Committal to
prison or
discharge.

(2) If the magistrate commits the fugitive criminal to Victoria Gaol, he shall thereupon inform the fugitive criminal that he will not be surrendered until after the expiration of 15 days from the date of such committal and that he has a right to apply to the Supreme Court for a writ of *habeas corpus*, and the magistrate shall forthwith send to the Governor the depositions and other evidence in the case, together with a report thereon and in particular in relation to—

Hong Kong.

- (a) the lapse of time since the commission of the extradition crime;
- (b) the length of residence in the Colony and the character of the fugitive criminal; and
- (c) any circumstances throwing suspicion on the origin or nature of the charge made.

11. Before ordering a fugitive criminal to be discharged the magistrate shall cause notice of his intention to make such order to be served on the Crown Solicitor.

Notice to
Crown Solicitor
before discharge.

12.—(1) On the expiration of 15 days from the date of the magistrate's order of committal, or, if a writ of *habeas corpus* has been issued and if, on the return to the writ, the Supreme Court has not discharged the fugitive criminal, immediately after the decision of the Court, or after such further period in either case as the Governor may allow, the Governor may, by warrant under his hand and seal, order the fugitive criminal to be surrendered to such person as the Governor considers to be authorised to receive him on behalf of the Chinese authorities, and the fugitive criminal shall be surrendered accordingly: Provided always that whenever the Governor, from the Magistrate's report or otherwise, has reason to suppose that any fugitive criminal who has been committed to the Victoria Gaol to await the further order of the Governor, has been resident in the Colony for one year or upwards, the depositions and evidence taken before the Magistrate on the investigation of the case shall, together with the Magistrate's report thereon be considered by the Governor in Council, [who shall be assisted in such consideration by the Chief Justice]*, and the Governor in Council shall decide whether such fugitive criminal shall be surrendered or not.

Warrant for
surrender, etc.

* [This sentence
rep. Ord. No. 37
of 1909].

(2) If the fugitive criminal while in the Colony escapes out of any custody into which he has been delivered in pursuance of a magistrate's warrant as aforesaid, it shall be lawful for any police officer or constable to take him without warrant and to restore

Hong Kong. him to the custody from which he has escaped, and for the person from whose custody the fugitive criminal has escaped to retake him or receive him from such police officer or constable and to hold him at all times as upon the original warrant.

Power to Governor to order discharge.

13. Except where any proceedings are actually pending upon a writ of *habeas corpus* before the Supreme Court and in such case with the concurrence in writing of the Judge having cognizance thereof, the Governor may at any time by order under his hand and seal discharge a fugitive criminal from custody.

Discharge if not surrendered within two months or on application to Judge.

14. If a fugitive criminal who has been committed to prison under this Ordinance to await the order of the Governor is not surrendered and conveyed out of the Colony within 2 months after such committal, any Judge of the Supreme Court may, on application made to him by or on behalf of the fugitive criminal and on proof that reasonable notice of the intention to make such application has been given to the Crown Solicitor, order the fugitive criminal to be discharged out of custody, unless sufficient cause is shewn to the contrary.

Aiders and abettors in extradition crime.

15. Every person who is accused or convicted of having counselled, procured, commanded, aided, or abetted the commission of any extradition crime or of being accessory before the fact to any extradition crime shall be deemed, for the purposes of this Ordinance, to be accused or convicted of having committed such crime, and shall be liable to be apprehended and surrendered accordingly.

Protection of magistrate and others acting under order.

16. If any action or suit is brought against a magistrate, the Superintendent of Victoria Gaol, a gaoler, police officer, constable, or any other person for anything done under or in obedience to any warrant or order issued under the provisions of this Ordinance, the proof of such warrant or order shall be a sufficient answer to such suit or action, and the defendant, on such proof as aforesaid, shall be entitled to a verdict or judgment accordingly and shall also be entitled to all costs of suit.

Use of forms.

17. The forms in the second schedule to this Ordinance or forms to the like effect, with such variations and additions as circumstances require, may be used for the purposes therein indicated and according to the directions therein contained, and instruments in these forms shall (as regards the form thereof) be valid and sufficient.

[omitted in Rev. Ed.—Procl. 9th Nov. 1889].

[19. This Ordinance shall not come into operation unless and until the Officer Administering the Government notifies

by proclamation that it is Her Majesty's pleasure not to Hong Kong.
disallow the same; and thereafter it shall come into opera-
tion on such day as the Officer Administering the Govern-
ment shall notify by the same or any other proclamation].

FIRST SCHEDULE.

Extradition Crimes.

1. Murder and attempt to murder.
2. Manslaughter.
3. Malicious wounding.
4. Counterfeiting or altering money, or uttering or bringing into circulation counterfeit or altered money.
5. Forgery, or counterfeiting, or altering, or uttering what is forged, or counterfeited, or altered, comprehending the crimes designated in the laws of the Colony as counterfeiting or falsification of paper money, bank notes, or other securities, forgery or other falsification of other public or private documents, likewise the uttering, or bringing into circulation, or wilfully using such counterfeited, forged, or falsified papers.
6. Embezzlement or larceny.
7. Receiving stolen goods.
8. Obtaining money or goods by false pretences.
9. Crimes against bankruptcy law.
10. Fraud committed by a bailee, banker, agent, factor, trustee, or director, or member or public officer of any company, made criminal by any law for the time being in force.
11. Rape.
12. Abduction.
13. Child-stealing.
14. Kidnapping.
15. False imprisonment.
16. Burglary or house-breaking.
17. Arson.
18. Robbery with violence.
19. Threats by letter or otherwise with intent to extort.
20. Piracy, whether by the law of nations or by municipal law.
21. Sinking or destroying a vessel at sea, or attempting to do so.
22. Assaults on board a ship on the high seas, with intent to destroy life, or to do grievous bodily harm.
23. Revolt, or conspiracy to revolt, by two or more persons on board a ship on the high seas, against the authority of the master.
24. Perjury or subornation of perjury.
25. Malicious injury to property, if the offence be indictable.

Hong Kong. 26. Any indictable offence under the Offences against the Person Ordinance, 1865, or any ordinance amending or substituted for the same, which is not included in the foregoing list.

27. Any indictable offence under the Forgery Ordinance, 1865, or any ordinance amending or substituted for the same, which is not included in the foregoing list.

28. Any indictable offence the Larceny Ordinance, 1865, or any ordinance amending or substituted for the same, which is not included in the foregoing list.

29. Any indictable offence under Coinage Offences Ordinance, 1865, or any ordinance amending or substituted for the same, which is not included in the foregoing list.

The forms given in the Second Schedule correspond with those of the English Extradition Act, 1870.

An Ordinance to provide for the more convenient administration of "The Extradition Acts, 1870 and 1873."

[2nd September, 1875].

NO. 11 OF 1875. REVISED NUMBER, **NO. 5 OF 1875.**

WHEREAS by the Act of the Imperial Parliament known as "The Extradition Act, 1870" it is amongst other things enacted that the said Act when applied by Order in Council, shall, unless it is otherwise provided by such Order, extend to every British possession, but with the following among other modifications; namely:—No warrant of a Secretary of State shall be required, and all powers vested in or acts authorised or required to be done under the said Act by the Police Magistrate and the Secretary of State, or either of them, in relation to the surrender of a fugitive criminal, may be done by the Governor of the British possession alone, and any prison in the British possession may be substituted for a prison in Middlesex; AND WHEREAS by the said Act it is also enacted that;—

[*here follows a recital of s. 18*].

AND WHEREAS by another Act of the Imperial Parliament known as "The Extradition Act, 1873," it is enacted that the said Act shall be construed as one with "The Extradition Act, 1870," and that the said two Acts may be cited together as "The Extradition Acts, 1870 and 1873";

And whereas it is expedient to provide a more convenient method of administering "The Extradition Acts, 1870 and 1873" in this Colony:

* * * * *

Hong Kong.

1. This Ordinance may be cited as "The Extradition Ordinance (Hong Kong), 1875."

Short title.

2. All powers vested in, or acts authorised or required to be done under "The Extradition Acts, 1870 and 1873" by the Secretary of State, in relation to the surrender of a fugitive criminal, may, in respect to this Colony, be exercised and done by the Governor.

Powers of the Secretary of State to be exercised by the Governor.

3. All powers vested in, or acts authorised or required to be done under "The Extradition Acts, 1870 and 1873" by the Police Magistrate, in relation to the surrender of a fugitive criminal, may, in respect to this Colony, be exercised and done by any Police Magistrate of the Colony.

Powers of the Police Magistrate to be exercised by the Police Magistrates of the Colony.

4. Victoria Gaol shall be a prison for the purposes of this Ordinance and "The Extradition Acts, 1870 and 1873."

Gaol.

[5. This Ordinance shall take effect on a day to be hereafter proclaimed by the Governor].

[omitted in Rev. Ed.]

ORDER IN COUNCIL

Directing that "The Extradition Ordinance (Hong Kong), 1875," shall have effect in Hong Kong as if it were part of the Imperial Act.

[20th March, 1877].

WHEREAS by section 18 of the Extradition Act, 1870, it is among other things enacted, That if by any law made after the passing of the said Act by the Legislature of any British Possession, provision is made for carrying into effect within such Possession the Surrender of Fugitive Criminals who are in, or suspected of being in, such British Possession, Her Majesty may, by the Order in Council applying the said Act in the case of any Foreign State or by any subsequent Order, either—

Suspend the operation within any such British Possession of the said Act, or of any part thereof, so far as it relates to such Foreign State, and so long as such law continues in force there and no longer;—

Or direct that such law or ordinance or any part thereof shall have effect in such British Possession, with or without modifications and alterations, as if it were part of the Act:

And whereas by a certain Ordinance enacted in the year 1875 by the Governor of Hong Kong, with the advice of the Legis-

Hong Kong. lative Council thereof, and numbered 11 of the said year, the short title of which is The Extradition Ordinance (Hong Kong), 1875, provision is made that all powers vested in, or acts authorised or required to be done, under the Acts of the Imperial Parliament known as The Extradition Acts, 1870 and 1873, by the Secretary of State or by the Police Magistrate, in relation to the surrender of a fugitive criminal, which by the said Imperial Acts are in respect of British possessions vested in or required to be done by the Governor alone, may, in respect of the Colony of Hong Kong, be exercised and done by the Governor or the Police Magistrate of the Colony respectively:

And whereas the said Ordinance has been confirmed and allowed by Her Majesty:

Now, therefore, Her Majesty, in pursuance of The Extradition Act, 1870, and in exercise of the power in that behalf in the said Act contained, doth by this present Order, by and with the advice of Her Majesty's Privy Council, direct that the said Extradition Ordinance (Hong Kong), 1875, shall have effect in the Colony of Hong Kong, without modification or alteration, as if it were part of The Extradition Act, 1870.

MACAO EXTRADITION ORDINANCE OF HONG KONG. §

No. 1 of 1881. REVISED NUMBER, **No. 1 of 1881.**

WHEREAS persons who have committed certain crimes within the territory of Macao may escape to this Colony and it is expedient to provide for the apprehension of such fugitives from justice and for their surrender to the Government of Macao in order that they may be dealt with according to law:—

* * * * *

Appeal from
magistrate to the
Supreme Court.

7. The following rules as to appeals to the Supreme Court shall be observed; that is to say,—

(1) If the fugitive desires to appeal to the Supreme Court against a magistrate's order of committal and notifies such desire to the magistrate at any time before the expiration of 15 days from the date of such order; or if the Attorney-General

§ This Ordinance follows in the main the Chinese Extradition Ordinance, 1887; this section is, however, set out as it deals with the subject of appeals from the Magistrate's decision to commit or discharge, in a somewhat exceptional manner.

desires to appeal to the Supreme Court against a magistrate's Hong Kong. order of discharge of a fugitive and notifies such desires* to the magistrate at any time before the actual discharge of the fugitive, the magistrate shall, subject to the provision in paragraph 3 hereinafter contained, grant such appeal and transmit forthwith to the Registrar of the Supreme Court the depositions and all other documents relating to the case, together with any statement in writing which he may think fit to annex in relation thereto;

* [sic].

(2) If the appeal is by the Attorney-General against an order of discharge, such order shall be suspended until the conclusion of the appeal, and the fugitive shall be detained in custody until the further order of the magistrate or of the Supreme Court;

(3) If the appeal is by a fugitive against an order of committal and the magistrate has reason to believe that the appeal is merely frivolous, he may refuse to grant the same:

(4) In case the magistrate refuses to grant an appeal to a fugitive on the ground that the same is frivolous, the Supreme Court may, if it thinks fit, upon the fugitive's petition in writing, setting forth the grounds of appeal, make an order directing the magistrate to grant the appeal;

(5) The magistrate shall cause notice of his intention to discharge a fugitive (otherwise than in pursuance of any decision of the Supreme Court), and also of any appeal by a fugitive against his committal, to be served upon the Crown Solicitor, and no fugitive shall be discharged by a magistrate (otherwise than as aforesaid), unless the Attorney-General has had an opportunity of being heard in opposition thereto and of giving notice of appeal;

(6) Every appeal under this Ordinance may be heard in vacation and either in Court or in Chambers, and shall be set down for hearing on such early day and at such hour as the Chief Justice may appoint, notice whereof shall be given in writing by the Registrar of the Supreme Court to the Superintendent of the Gaol, who shall, on the day and hour appointed, bring the fugitive before the Chief Justice; and on the hearing of the appeal the Chief Justice may, if he thinks fit, receive any new evidence and may either affirm or reverse the decision of the magistrate according as he is of opinion that there is or is not sufficient *prima facie* evidence of the criminality of the fugitive or that the conditions and regulations of section 5* have or have not been complied with, and may order the fugitive to be

* [as to the hearing before the magistrate].

Hong Kong. committed to gaol or to be discharged, as the case may be, or make any other order with respect to the said matter as may be requisite to the due adjudication thereof.

STRAITS SETTLEMENTS.

*The Straits Settlements Extradition Order in Council, 1889,**
[19th August, 1889].

as amended by the Straits Settlements Extradition Order
in Council, 1901. [26th September, 1901].

Consolidation. WHEREAS by Orders in Council, dated respectively 26th June, 1879,† 31st December, 1883,‡ and 29th November, 1884,§ provision has been made for the surrender by the Governor of the Straits Settlements to Foreign States, in the case of which the Extradition Act, 1870, does not apply, of persons accused or convicted of the commission of certain crimes and offences within the jurisdiction of such States:

And whereas it is expedient to consolidate and amend the said Orders:

Definitions. Now, therefore, it is hereby ordered by Her Majesty, by and with the advice of Her Privy Council, as follows:—

1. In this Order in Council—

“The Governor” means the person for the time being administering the Government of the Straits Settlements.

“The Colony” means the Straits Settlements.

“Protected States” means the States specified in the second schedule to this Order, and the Confederation or Group of States known as the Nêgri Sêm bilan, shall be deemed for the purposes of this Order to be one State.

“Fugitive criminal” means any person accused or convicted of any crime committed either before or after the date of this Order, which, if committed in England or within English jurisdiction, would be one of the crimes described in the first schedule to this Order, or of having counselled, procured, commanded, aided, or abetted the commission of,

* This Order in Council, as amended, is printed from the Statutory Rules and Orders, Revised, Vol. II.

† Published in London Gazette, July 4, 1879, p. 4273.

‡ Published in London Gazette, January 11, 1884, p. 185.

§ Published in London Gazette, December 5, 1884, p. 5657.

or of being accessory before the fact to any such crime as aforesaid.

Straits
Settlements.

“Fugitive criminal of a State” means a person accused or convicted of any such crime as aforesaid, or of having counselled, procured, commanded, aided, or abetted the commission of, or of being accessory before the fact to any such crime as aforesaid, committed within the jurisdiction of that State.

With reference to each of the Protected States “fugitive criminal” and “fugitive criminal of a State,” include any person accused or convicted of a breach of a contract of service to be performed within the jurisdiction of such State, committed either before or after the date of this Order within the jurisdiction of such State, which, if it had been committed in the Colony, and the contract broken had been a contract to be performed in the Colony would have been punishable under the law of the Colony with imprisonment or with fine, and with imprisonment in default of payment of such fine.

“Crime” includes any such breach of contract as aforesaid, committed within the jurisdiction of any of the Protected States.

“Charge” includes conviction.

“The crime charged” includes the crime of which the fugitive criminal is alleged to have been convicted.

“Conviction” and “convicted” do not include or refer to a conviction which, under foreign law, is a conviction for contumacy, but the term “accused” includes a person convicted for contumacy.

The masculine includes the feminine.

2. For the purposes of this Order every Colony, Dependency, Foreign colonies, and constituent part of a Foreign State shall be deemed to be within the jurisdiction of such Foreign State.

3. If requisition be made to the Governor by any Foreign State in the case of which the Extradition Act, 1870,* does not for the time being apply, or by any person recognised by him as an authorised Minister or Officer, Consul or Vice-Consul of such State, or, in the case of any of the Protected States, by any officer appointed by Her Majesty, or by the Governor as British Resident or Superintendent or Secretary to the Government in such State, for the surrender of a fugitive criminal of such State, who is or is suspected of being in any part of the Colony, the

Requisition by
Foreign State to
which Extradition
Act does not
apply.

* *cf.* p. 37.

Straits Settlements.

Governor may issue an order under his hand and seal to any magistrate or magistrates of the Colony, directing him or them or any of them to inquire into the truth of the charge.

Discretion of Governor.

4. The Governor shall not be bound to comply with a requisition for the surrender of a fugitive criminal under this Order, but may, at his absolute discretion, either comply with any such requisition in accordance with the provisions of this Order, with or without conditions, or refuse to comply therewith.

Governor's order for inquiry.

5. Every such order for inquiry shall signify that the requisition for surrender has been made, shall state the nature of the crime charged, the name or designation (if the name be not known), and any other description that may be thought necessary of the fugitive criminal, and shall require the magistrate or magistrates to whom it shall be directed, or any of them, to inquire into the truth of the charge, and proceed in pursuance of this Order.

Effect of order.

6. The order for inquiry shall be a sufficient proof of the requisition having been made, and a sufficient justification for all acts done in pursuance thereof, and upon production thereof to any magistrate to whom it is directed, he shall have the same powers as if the crime charged had been committed within his jurisdiction.

Magistrate's warrant.

7. If the evidence adduced shall be such as would, in the opinion of the magistrate, have justified the apprehension of the fugitive criminal named or designated in the order if the crime charged had been committed within his jurisdiction, he shall issue his warrant for the apprehension of the fugitive criminal.

Summary warrant.

8. Any magistrate of the Colony may issue his warrant for the apprehension of a fugitive criminal, without the production of any such order for inquiry as aforesaid, on such information or complaint, and on such evidence, or after such proceedings as would, in his opinion, have justified the issue of such warrant if the crime charged had been committed within his jurisdiction.

Provided that a magistrate issuing a warrant under this Order without an order for inquiry shall forthwith send a report of the fact of such issue, together with the evidence and information or complaint, or certified copies thereof, to the Governor, who may, if he thinks fit, order the warrant to be cancelled, and the person apprehended on such warrant to be discharged.

Warrant to issue as if crime

9. Every warrant for the apprehension of a fugitive criminal issued under this Order shall be issued in the same manner as if the crime charged had been committed within the jurisdiction of

the magistrate issuing it, and shall contain a memorandum stating that it is issued under this Order and may be executed in any part of the Colony.

Straits Settlements.

10. A fugitive criminal apprehended on a warrant issued under this Order shall be forthwith brought before a magistrate within whose jurisdiction he shall be apprehended, and such magistrate shall, subject to the provisions of this Order, deal with the case in the same manner as if the fugitive criminal were charged with an indictable offence committed within his jurisdiction.

committed in
Colony.
Hearing.

11. A fugitive criminal apprehended on a warrant issued under this Order without an order for inquiry shall be committed by the magistrate before whom he is brought to some prison in the Colony for detention until an order shall be made with respect to him by the Governor, either for inquiry or for his discharge; but such fugitive criminal shall be discharged by the said magistrate unless such magistrate within such time as with reference to the circumstances of the case he deems reasonable, receives from the Governor an order for inquiry with respect to such fugitive criminal.

Committal
pending
Governor's order.

Upon the receipt of such order for inquiry the magistrate shall proceed in the same manner as if the order for inquiry had preceded the issue of the warrant for the apprehension of the fugitive criminal.

12. If a fugitive criminal shall, in pursuance of this Order, be brought before a magistrate other than the magistrate who issued the warrant for his apprehension, the depositions and documents upon which the warrant was issued, or copies thereof certified under the hand of the magistrate by whom the warrant was issued, shall, upon the requisition of the magistrate before whom the fugitive criminal shall be brought, be forwarded to such last-mentioned magistrate.

Original
depositions.

13. Depositions, statements on oath, or affirmations taken in a Foreign State, and copies of such original depositions or statements or affirmations, and foreign certificates of, or judicial documents stating the fact of a conviction, may, if duly authenticated, be received in evidence in proceedings under this Order. Such depositions, statements, or affirmations, and copies thereof, and such certificates or judicial documents shall be deemed to be duly authenticated for the purposes of this Order as follows:—

Foreign
depositions.

(1) If the depositions or statements or affirmations purport to be certified under the hand of a Judge, magistrate,

Straits Settlements.

or officer of the Foreign State where the same were taken to be the original depositions, statements, or affirmations, or to be true copies thereof, as the case may require:

Authentication of documents.

(2) If the certificates or judicial documents purport to be certified by a Judge, magistrate, or officer of the Foreign State where the conviction took place, and if in every case the depositions, statements, affirmations, copies, certificates, and judicial documents (as the case may be) are authenticated by the oath of some witness or by being sealed with the official seal of some Minister of State,† and all Courts of Justice and magistrates in the Colony shall take judicial notice of such official seal.

Committal.

14. The magistrate before whom a fugitive criminal accused of a crime shall be brought in pursuance of this Order shall, if such evidence is produced as would, according to the law of the Colony, justify the committal for trial of the fugitive criminal if the crime of which he is accused had been committed in the Colony, commit him to prison in the Colony, but otherwise shall order him to be discharged.

Breach of contract in Protected States.

15. The magistrate before whom a fugitive criminal of any of the Protected States accused of any such breach of contract as aforesaid shall be brought in pursuance of this Order shall, if such evidence is produced as (subject to the provisions of this Order) would, according to the law of the Colony, have justified the committal for trial of the fugitive criminal if the breach of contract of which he is accused had been an indictable offence and had been committed in the Colony, commit him to some prison in the Colony, but otherwise shall order him to be discharged.

Convicted fugitive.

16. The magistrate before whom a fugitive criminal alleged to have been convicted of a crime is brought in pursuance of this Order shall, if such evidence is produced as subject to the provisions of this Order would, according to the law of the Colony, prove that the prisoner was so convicted, commit him to prison, but otherwise shall order him to be discharged.

† The Order in Council of 1901 further provides as follows:—4. In clause 13 of the Straits Settlements Extradition Order, 1889, the expression "Minister of State" shall in the case of any of the Protected States (except the Territory of the British North Borneo Company) include any officer appointed by Her late Majesty Queen Victoria, by His Majesty, or by the Governor as Resident-General, Resident, or Secretary to the Resident in such State, and shall in the case of the Territory of the British North Borneo Company mean the Principal Representative for the time being of the British North Borneo Company in North Borneo.

17. Whenever a magistrate commits a fugitive criminal to prison in pursuance of either the 14th, 15th, or 16th clause of this Order he shall inform such fugitive criminal that he will not be surrendered until after the expiration of 15 days, and that during such 15 days he may appeal to any Judge of the Supreme Court of the Colony. Straits Settlements.
Delay in surrender.

18. Any person who is committed to prison under the 14th, 15th, or 16th clause of this Order may, within 15 days from the date of such committal, appeal against such committal to a Judge of the Supreme Court of the Colony, and such Judge shall, upon hearing such appeal, either affirm the order of committal or order the appellant to be discharged from prison, in which latter case no order shall be made for his surrender to the Foreign State from which the requisition for his surrender proceeded. Appeal.

19. Every magistrate who shall commit a fugitive criminal to prison under this Order shall forthwith report the result of his proceedings to the Governor, together with any remarks which he may deem it necessary or proper to make upon the case, and together with a copy of all depositions and documents used before him. Report to Governor.

20. Upon receipt of a magistrate's report of the committal of a fugitive criminal under the provisions of this Order, the Governor may, after the expiration of 15 days from the date of committal, or after the affirmation of the order of committal by the Judge before whom the appeal of the fugitive criminal is brought, as the case may be, or after such further period as may be allowed in either case by the Governor, by warrant under his hand and seal order the fugitive criminal to be surrendered to such person as may, in his opinion, be duly authorised to receive the fugitive criminal by the Foreign State from which the requisition for his surrender proceeded and such fugitive criminal shall be surrendered accordingly. Surrender.

Provided always that no fugitive criminal shall be surrendered under this Order if—

- (1) the offence in respect of which his surrender is demanded is of a political character, or if it is shewn to the satisfaction of the Governor that the requisition for his surrender has been made with a view to try or punish him for an offence of a political character, nor Political offences.
- (2) unless provision is made by the law of the State from which the requisition for his surrender proceeds, or by Trial to be limited to

Straits Settlements.

extradition offence.

Conveyance to foreign State.

Escape.

Discharge if no surrender in 2 months.

arrangement, that he shall not, until he has been restored to Her Majesty's Dominions, be detained or tried in that State for any offence committed before his surrender other than the crime in respect of which he is surrendered.

21. It shall be lawful for the person to whom a fugitive criminal shall be so ordered to be surrendered to receive, hold in custody, and convey within the jurisdiction of the Foreign State from which the requisition for his surrender came, such fugitive criminal, and if such fugitive criminal escapes out of the custody of such person, it shall be lawful to retake him in the same manner as any person accused of any crime against the laws of the Colony may be retaken upon an escape from lawful custody.

22. If any fugitive criminal committed to prison under this Order shall not be surrendered and conveyed out of the Colony within 2 calendar months after his committal, it shall be lawful for any Judge of the Supreme Court of the Colony, upon application by or on behalf of the fugitive criminal, and upon proof that notice of the application has been given to the Governor or to the Colonial Secretary, to order the fugitive criminal to be discharged out of custody, unless sufficient cause is shown to the contrary.

23. The schedules to this Order annexed shall be taken to be part of this Order.

THE FIRST SCHEDULE.

Extradition offences.

The following list of crimes is to be construed according to the law existing in the Straits Settlements at the date of the alleged crime :—

Murder and attempt and conspiracy to murder.

Manslaughter.

Counterfeiting and altering money and uttering counterfeit or altered money.

Forgery, counterfeiting, and altering and uttering what is forged or counterfeited or altered.

Embezzlement and larceny.

Obtaining money or goods by false pretences.

Crimes by bankrupts against bankruptcy law.

Fraud by a bailee, banker, agent, factor, trustee, or director or member or public officer of any company made criminal by any Act for the time being in force.

Rape.

Abduction.

IV.

FUGITIVE OFFENDERS WITHIN THE BRITISH DOMINIONS.

THE FUGITIVE OFFENDERS ACT,

44 & 45 VICT. c. 69.

An Act to amend the law with respect to Fugitive Offenders in Her Majesty's Dominions, and for other purposes connected with the trial of offenders. [27th August, 1881].

1. This Act may be cited as the Fugitive Offenders Act, 1881.

PART I.

Return of Fugitives.

Liability of
fugitive to be
apprehended
and returned.

2. Where a person accused of having committed an offence (to which this part of this Act applies) in one part of Her Majesty's dominions has left that part, such person (in this Act referred to as a fugitive from that part) if found in another part of Her Majesty's dominions, shall be liable to be apprehended and returned in manner provided by this Act to the part from which he is a fugitive.

A fugitive may be so apprehended under an endorsed warrant or a provisional warrant.

Endorsing of
warrant for
apprehension
of fugitive.

3. Where a warrant has been issued in one part of Her Majesty's dominions for the apprehension of a fugitive from that part, any of the following authorities in another part of Her Majesty's dominions in or on the way to which the fugitive is or is suspected to be; (that is to say,)

- (1) A Judge of a Superior Court in such part; and
- (2) In the United Kingdom a Secretary of State and one of the magistrates of the metropolitan Police Court in Bow Street; and

(3) In a British possession the Governor of that possession, if satisfied that the warrant was issued by some person having lawful authority to issue the same, may endorse such warrant in manner provided by this Act, and the warrant so endorsed shall be a sufficient authority to apprehend the fugitive in the part of Her Majesty's dominions in which it is endorsed, and bring him before a magistrate.

Fugitive
Offenders Act.

4. A magistrate of any part of Her Majesty's dominions may issue a provisional warrant for the apprehension of a fugitive who is or is suspected of being in or on his way to that part on such information, and under such circumstances, as would in his opinion justify the issue of a warrant if the offence of which the fugitive is accused had been committed within his jurisdiction, and such warrant may be backed and executed accordingly.

Provisional
warrant for
apprehension
of fugitive.

A magistrate issuing a provisional warrant shall forthwith send a report of the issue, together with the information or a certified copy thereof, if he is in the United Kingdom, to a Secretary of State, and if he is in a British possession, to the Governor of that possession, and the Secretary of State or Governor may, if he think fit, discharge the person apprehended under such warrant.

5. A fugitive when apprehended shall be brought before a magistrate, who (subject to the provisions of this Act) shall hear the case in the same manner and have the same jurisdiction and powers, as near as may be (including the power to remand and admit to bail), as if the fugitive were charged with an offence committed within his jurisdiction.

Dealing with
fugitive when
apprehended.

If the endorsed warrant for the apprehension of the fugitive is duly authenticated, and such evidence is produced as (subject to the provisions of this Act) according to the law ordinarily administered by the magistrate, raises a strong or probable presumption that the fugitive committed the offence mentioned in the warrant, and that the offence is one to which this part of this Act applies, the magistrate shall commit the fugitive to prison to await his return, and shall forthwith send a certificate of the committal and such report of the case as he may think fit, if in the United Kingdom to a Secretary of State, and if in a British possession to the Governor of that possession.

Where the magistrate commits the fugitive to prison he shall inform the fugitive that he will not be surrendered until after the expiration of 15 days, and that he has a right to apply for a writ of *habeas corpus*, or other like process.

Fugitive
Offenders Act.

Return of
fugitive by
warrant.

A fugitive apprehended on a provisional warrant may be from time to time remanded for such reasonable time not exceeding 7 days at any one time, as under the circumstances seems requisite for the production of an endorsed warrant.

6. Upon the expiration of 15 days after a fugitive has been committed to prison to await his return, or if a writ of *habeas corpus* or other like process is issued with reference to such fugitive by a Superior Court, after the final decision of the Court in the case,

- (1) if the fugitive is so committed in the United Kingdom, a Secretary of State; and
- (2) if the fugitive is so committed in a British possession, the Governor of that possession,

may, if he thinks it just, by warrant under his hand order that fugitive to be returned to the part of Her Majesty's dominions from which he is a fugitive, and for that purpose to be delivered into the custody of the persons to whom the warrant is addressed, or some one or more of them, and to be held in custody, and conveyed by sea or otherwise to the said part of Her Majesty's dominions, to be dealt with there in due course of law as if he had been there apprehended, and such warrant shall be forthwith executed according to the tenor thereof.

The governor or other chief officer of any prison, on request of any person having the custody of a fugitive under any such warrant, and on payment or tender of a reasonable amount for expenses, shall receive such fugitive and detain him for such reasonable time as may be requested by the said person for the purpose of the proper execution of the warrant.

Discharge
of person
apprehended if
not returned
within 1 month.

7. If a fugitive who, in pursuance of this part of this Act, has been committed to prison in any part of Her Majesty's dominions to await his return, is not conveyed out of that part within one month after such committal, a Superior Court, upon application by or on behalf of the fugitive, and upon proof that reasonable notice of the intention to make such application has been given, if the said part is the United Kingdom to a Secretary of State, and if the said part is a British possession to the Governor of the possession, may, unless sufficient cause is shown to the contrary, order the fugitive to be discharged out of custody.

Sending back of
persons apprehended if not
prosecuted within
6 months or
acquitted.

8. Where a person accused of an offence and returned in pursuance of this part of this Act to any part of Her Majesty's dominions, either is not prosecuted for the said offence within 6 months after his arrival in that part, or is acquitted of the said

offence, then if that part is the United Kingdom a Secretary of State, and if that part is a British possession the Governor of that possession, may, if he think fit, on the request of such person, cause him to be sent back free of cost and with as little delay as possible to the part of Her Majesty's dominions in or on his way to which he was apprehended. Fugitive
Offenders Act.

9. This part of the Act shall apply to the following offences, namely, to treason and piracy, and to every offence, whether called felony, misdemeanor, crime, or by any other name, which is for the time being punishable in the part of Her Majesty's dominions in which it was committed, either on indictment or information, by imprisonment with hard labour for a term of 12 months or more, or by any greater punishment; and for the purposes of this section, rigorous imprisonment, and any confinement in a prison combined with labour, by whatever name it is called, shall be deemed to be imprisonment with hard labour. Offences to
which this Part
of this Act
applies.

This part of this Act shall apply to an offence notwithstanding that by the law of the part of Her Majesty's dominions in or on his way to which the fugitive is or is suspected of being it is not an offence, or not an offence to which this part of this Act applies; and all the provisions of this part of this Act, including those relating to a provisional warrant and to a committal to prison, shall be construed as if the offence were in such last-mentioned part of Her Majesty's dominions an offence to which this part of this Act applies.

10. Where it is made to appear to a Superior Court that by reason of the trivial nature of the case, or by reason of the application for the return of a fugitive not being made in good faith in the interests of justice or otherwise, it would, having regard to the distance, to the facilities for communication, and to all the circumstances of the case, be unjust or oppressive or too severe a punishment to return the fugitive either at all or until the expiration of a certain period, such Court may discharge the fugitive, either absolutely or on bail, or order that he shall not be returned until after the expiration of the period named in the order, or may make such other order in the premises as to the Court seems just. Powers of
Superior Court
to discharge
fugitive when
case frivolous or
return unjust.

11. In Ireland the Lord Lieutenant or Lords Justices or other chief Governor or Governors of Ireland, also the Chief Secretary of such Lord Lieutenant, may, as well as a Secretary of State, execute any portion of the powers by this part of this Act vested in a Secretary of State. Power of Lord
Lieutenant in
Ireland.

Fugitive
Offenders Act.

PART II.

INTER-COLONIAL BACKING OF WARRANTS, AND OFFENCES.

Application of Part of Act.

Application of
Part of Act to
group of British
possessions.

12. This part of this Act shall apply only to those groups of British possessions to which, by reason of their contiguity or otherwise, it may seem expedient to Her Majesty to apply the same.

It shall be lawful for Her Majesty from time to time by Order in Council to direct that this part of this Act shall apply to the group of British possessions mentioned in the Order, and by the same or any subsequent Order to except certain offences from the application of this part of this Act, and to limit the application of this part of this Act by such conditions, exceptions, and qualifications as may be deemed expedient.

Backing of Warrants.

Backing in
one British
possession of
warrant issued
in another of
same group.

13. Where in a British possession of a group to which this part of this Act applies a warrant has been issued for the apprehension of a person accused of an offence punishable by law in that possession, and such person is or is suspected of being in or on the way to another British possession of the same group, a magistrate in the last-mentioned possession, if satisfied that the warrant was issued by a person having lawful authority to issue the same, may endorse such warrant in manner provided by this Act, and the warrant so endorsed shall be a sufficient authority to apprehend, within the jurisdiction of the endorsing magistrate, the person named in the warrant, and bring him before the endorsing magistrate or some other magistrate in the same British possession.

Return of
prisoner
apprehended
under backed
warrant.

14. The magistrate before whom a person so apprehended is brought, if he is satisfied that the warrant is duly authenticated as directed by this Act and was issued by a person having lawful authority to issue the same, and is satisfied on oath that the prisoner is the person named or otherwise described in the warrant, may order such prisoner to be returned to the British possession in which the warrant was issued, and for that purpose to be delivered into the custody of the persons to whom the warrant is addressed, or any one or more of them, and to be held in

custody and conveyed by sea or otherwise into the British possession in which the warrant was issued, there to be dealt with according to law as if he had been there apprehended. Such order for return may be made by warrant under the hand of the magistrate making it, and may be executed according to the tenor thereof.

Fugitive Offenders Act.

A magistrate shall, so far as is requisite for the exercise of the powers of this section, have the same power, including the power to remand and admit to bail a prisoner, as he has in the case of a person apprehended under a warrant issued by him.

15. Where a person required to give evidence on behalf of the prosecutor or defendant on a charge for an offence punishable by law in a British possession of a group to which this part of this Act applies, is or is suspected of being in or on his way to any other British possession of the same group, a Judge, magistrate, or other officer who would have lawful authority to issue a summons, requiring the attendance of such witness, if the witness were within his jurisdiction, may issue a summons for the attendance of such witness, and a magistrate in any other British possession of the same group, if satisfied that the summons was issued by some Judge, magistrate, or officer having lawful authority as aforesaid, may endorse the summons with his name; and the witness, on service in that possession of the summons, so endorsed, and on payment or tender of a reasonable amount for his expenses, shall obey the summons, and in default shall be liable to be tried and punished either in the possession in which he is served or in the possession in which the summons was issued, and shall be liable to the punishment imposed by the law of the possession in which he is tried for the failure of a witness to obey such a summons. The expression "summons" in this section includes any *subpœna* or other process for requiring the attendance of a witness.

Backing in one British possession of summons, &c., to witness, issued in another possession of same group.

16. A magistrate in a British possession of a group to which this part of this Act applies, before the endorsement in pursuance of this part of this Act of a warrant for the apprehension of any person, may issue a provisional warrant for the apprehension of that person, on such information and under such circumstances as would in his opinion justify the issue of a warrant if the offence of which such person is accused were an offence punishable by the law of the said possession, and had been committed within his jurisdiction, and such warrant may be backed and executed accordingly; provided that a person arrested under such provi-

Provisional warrant in group of British possessions.

**Fugitive
Offenders Act.**

sional warrant shall be discharged unless the original warrant is produced and endorsed within such reasonable time as may under the circumstances seem requisite.

Discharge of
prisoner not
returned within
1 month to
British
possession of
same group.

17. If a prisoner in a British possession whose return is authorised in pursuance of this part of this Act is not conveyed out of that possession within one month after the date of the warrant ordering his return, a magistrate or a Superior Court, upon application by or on behalf of the prisoner, and upon proof that reasonable notice of the intention to make such application has been given to the person holding the warrant and to the chief officer of the police of such possession or of the province or town where the prisoner is in custody, may, unless sufficient cause is shown to the contrary, order such prisoner to be discharged out of custody.

Any order or refusal to make an order of discharge by a magistrate under this section shall be subject to appeal to a Superior Court.

Sending back of
prisoner not
prosecuted or
acquitted to
British
possession of
same group.

18. Where a prisoner accused of an offence is returned in pursuance of this part of this Act to a British possession, and either is not prosecuted for the said offence within 6 months after his arrival in that possession or is acquitted of the said offence, the Governor of that possession, if he thinks fit, may, on the requisition of such person, cause him to be sent back, free of cost, and with as little delay as possible, to the British possession in or on his way to which he was apprehended.

Refusal to return
prisoner where
offence too
trivial.

19. Where the return of a prisoner is sought or ordered under this part of this Act, and it is made to appear to a magistrate or to a Superior Court that by reason of the trivial nature of the case, or by reason of the application for the return of such prisoner not being made in good faith in the interests of justice or otherwise, it would, having regard to the distance, to the facilities of communication, and to all the circumstances of the case, be unjust or oppressive, or too severe a punishment, to return the prisoner either at all or until the expiration of a certain period, the Court or magistrate may discharge the prisoner either absolutely or on bail, or order that he shall not be returned until after the expiration of the period named in the order, or may make such other order in the premises as to the magistrate or Court seems just.

Any order or refusal to make an order of discharge by a magistrate under this section shall be subject to an appeal to a Superior Court.

PART III.

Trial, &c. of Offences.

20. Where two British possessions adjoin, a person accused of an offence committed on or within the distance of 500 yards from the common boundary of such possessions may be apprehended, tried, and punished in either of such possessions.

Offences committed on boundary of two adjoining British possessions.

21. Where an offence is committed on any person or in respect of any property in or upon any carriage, cart, or vehicle whatsoever employed in a journey, or on board any vessel whatsoever employed in a navigable river, lake, canal, or inland navigation, the person accused of such offence may be tried in any British possession through a part of which such carriage, cart, vehicle, or vessel passed in the course of the journey or voyage during which the offence was committed; and where the side, bank, centre, or other part of the road, river, lake, canal, or inland navigation along which the carriage, cart, vehicle, or vessel passed in the course of such journey or voyage is the boundary of any British possession, a person may be tried for such offence in any British possession of which it is the boundary:

Offences committed on journey between two British possessions.

Provided that nothing in this section shall authorise the trial for such offence of a person who is not a British subject, where it is not shown that the offence was committed in a British possession.

22. A person accused of the offence (under whatever name it is known) of swearing or making any false deposition, or of giving or fabricating any false evidence, for the purposes of this Act, may be tried either in the part of Her Majesty's dominions in which such deposition or evidence is used, or in the part in which the same was sworn, made, given, or fabricated, as the justice of the case may require.

Trial of offence of false swearing or giving false evidence.

23. Where any part of this Act provides for the place of trial of a person accused of an offence, that offence shall, for all purposes of and incidental to the apprehension, trial, and punishment of such person, and of and incidental to any proceedings and matters preliminary, incidental to, or consequential thereon, and of and incidental to the jurisdiction of any Court, constable, or officer with reference to such offence, and to any person accused of such offence, be deemed to have been committed in any place in which the person accused of the offence can be

Supplemental provision as to trial of person in any place.

Fugitive
Offenders Act.

37 & 38 Vict.
c. 27.

Issue of search
warrant.

tried for it; and such person may be punished in accordance with the Courts (Colonial) Jurisdiction Act, 1874.

24. Where a warrant for the apprehension of a person accused of an offence has been endorsed in pursuance of any part of this Act in any part of Her Majesty's dominions, or where any part of the Act provides for the place of trial of a person accused of an offence, every Court and magistrate of the part in which the warrant is endorsed or the person accused of the offence can be tried shall have the same power of issuing a warrant to search for any property alleged to be stolen or to be otherwise unlawfully taken or obtained by such person, or otherwise to be the subject of such offence, as that Court or magistrate would have if the property had been stolen or otherwise unlawfully taken or obtained, or the offence had been committed wholly within the jurisdiction of such Court or magistrate.

Removal of
prisoner by sea
from one place
to another.

25. Where a person is in legal custody in a British possession either in pursuance of this Act or otherwise, and such person is required to be removed in custody to another place in or belonging to the same British possession, such person, if removed by sea in a vessel belonging to Her Majesty or any of Her Majesty's subjects, shall be deemed to continue in legal custody until he reaches the place to which he is required to be removed; and the provisions of this Act with respect to the retaking, of a prisoner who has escaped, and with respect to the trial and punishment of a person guilty of the offence of escaping or attempting to escape, or aiding or attempting to aid a prisoner to escape, shall apply to the case of a prisoner escaping while being lawfully removed as aforesaid, in like manner as if he were being removed in pursuance of a warrant endorsed in pursuance of this Act.

PART IV.

SUPPLEMENTAL.

Warrants and Escape.

Endorsement of
warrant.

26. An endorsement of a warrant in pursuance of this Act shall be signed by the authority endorsing the same, and shall authorise all or any of the persons named in the endorsement, and of the persons to whom the warrant was originally directed, and also every constable, to execute the warrant within the part of Her Majesty's dominions or place within which such endorse-

ment is by this Act made a sufficient authority, by apprehending the person named in it, and bringing him before some magistrate in the said part or place, whether the magistrate named in the endorsement or some other. Fugitive Offenders Act.

For the purposes of this Act every warrant, summons, *sub-pœna*, and process, and every endorsement made in pursuance of this Act thereon, shall remain in force, notwithstanding that the person signing the warrant or such endorsement dies or ceases to hold office.

27. Where a fugitive or prisoner is authorised to be returned to any part of Her Majesty's dominions in pursuance of Part I or Part II of this Act, such fugitive or prisoner may be sent thither in any ship belonging to Her Majesty or to any of Her subjects. Conveyance of fugitives and witnesses.

For the purpose aforesaid, the authority signing the warrant for the return may order the master of any ship belonging to any subject of Her Majesty bound to the said part of Her Majesty's dominions to receive and afford a passage and subsistence during the voyage to such fugitive or prisoner, and to the person having him in custody, and to the witnesses, so that such master be not required to receive more than one fugitive or prisoner for every 100 tons of his ship's registered tonnage, or more than one witness for every 50 tons of such tonnage.

The said authority shall endorse or cause to be endorsed upon the agreement of the ship such particulars with respect to any fugitive prisoner or witness sent in her as the Board of Trade from time to time require.

Every such master shall, on his ship's arrival in the said part of Her Majesty's dominions, cause such fugitive or prisoner, if he is not in the custody of any person, to be given into the custody of some constable, there to be dealt with according to law.

Every master who fails on payment or tender of a reasonable amount for expenses to comply with an order made in pursuance of this section, or to cause a fugitive or prisoner committed to his charge to be given into custody as required by this section, shall be liable on summary conviction to a fine not exceeding £50, which may be recovered in any part of Her Majesty's dominions in like manner as a penalty of the same amount under the Merchant Shipping Act, 1854,* and the Acts amending the same. * 17 & 18 Vict. c. 104; now Act of 1894—57 & 58 Vict. c. 60.

28. If a prisoner escape, by breach of prison or otherwise, out of the custody of a person acting under a warrant issued or Escape of prisoner from custody.

Fugitive
Offenders Act.

endorsed in pursuance of this Act, he may be retaken in the same manner as a person accused of a crime against the law of that part of Her Majesty's dominions to which he escapes may be retaken upon an escape.

A person guilty of the offence of escaping or of attempting to escape, or of aiding or attempting to aid a prisoner to escape, by breach of prison or otherwise, from custody under any warrant issued or endorsed in pursuance of this Act, may be tried in any of the following parts of Her Majesty's dominions, namely, the part to which and the part from which the prisoner is being removed, and the part in which the prisoner escapes, and the part in which the offender is found.

*Evidence.*Depositions to be
evidence, and
authentication
of depositions
and warrants.

29. A magistrate may take depositions for the purposes of this Act in the absence of a person accused of an offence in like manner as he might take the same if such person were present and accused of the offence before him.

Depositions (whether taken in the absence of the fugitive or otherwise) and copies thereof, and official certificates of or judicial documents stating facts, may, if duly authenticated, be received in evidence in proceedings under this Act.

Provided that nothing in this Act shall authorise the reception of any such depositions, copies, certificates, or documents in evidence against a person upon his trial for an offence.

Warrants and depositions, and copies thereof, and official certificates of or judicial documents stating facts, shall be deemed duly authenticated for the purposes of this Act if they are authenticated in manner provided for the time being by law, or if they purport to be signed by or authenticated by the signature of a Judge, magistrate, or officer of the part of Her Majesty's dominions in which the same are issued, taken, or made, and are authenticated either by the oath of some witness, or by being sealed with the official seal of a Secretary of State, or with the public seal of a British possession, or with the official seal of a Governor of a British possession, or of a colonial secretary, or of some secretary or minister administering a department of the Government of a British possession.

And all Courts and magistrates shall take judicial notice of every such seal as is in this section mentioned, and shall admit in evidence without further proof the documents authenticated by it.

30. The jurisdiction under Part I of this Act to hear a case and commit a fugitive to prison to await his return shall be exercised,—

Fugitive Offenders Act.

Provision as to exercise of jurisdiction by magistrates.

- (1) In England, by a chief magistrate of the metropolitan Police Courts or one of the other magistrates of the metropolitan Police Court at Bow Street; and
- (2) In Scotland, by the sheriff or sheriff substitute of the county of Edinburgh; and
- (3) In Ireland, by one of the police magistrates of the Dublin metropolitan police district; and
- (4) In a British possession, by any Judge, justice of the peace, or other officer having the like jurisdiction as one of the magistrates of the metropolitan Police Court in Bow Street, or by such other other Court, Judge, or magistrate as may be from time to time provided by an Act or ordinance passed by the Legislature of that possession.

If a fugitive is apprehended and brought before a magistrate who has no power to exercise the jurisdiction under this Act in respect of that fugitive, that magistrate shall order the fugitive to be brought before some magistrate having that jurisdiction, and such order shall be obeyed.

31. It shall be lawful for Her Majesty in Council from time to time to make Orders for the purposes of this Act, and to revoke and vary any Order so made, and every Order so made shall while it is in force have the same effect as if it were enacted in this Act.

Power as to making and revocation of Order in Council.

An Order in Council made for the purposes of this Act shall be laid before Parliament as soon as may be after it is made if Parliament is then in session, or if not, as soon as may be after the commencement of the then next session of Parliament.

32. If the Legislature of a British possession pass any Act or ordinance—

Power of Legislature of British possession to pass laws for carrying into effect this Act.

- (1) For defining the offences committed in that possession to which this Act or any part thereof is to apply; or
- (2) For determining the Court, Judge, magistrate, officer, or person by whom and the manner in which any jurisdiction or power under this Act is to be exercised; or
- (3) For payment of the costs incurred in returning a fugitive or a prisoner, or in sending him back if not prosecuted or if acquitted, or otherwise in the execution of this Act; or

Fugitive
Offenders Act.

(4) In any manner for the carrying of this Act or any part thereof into effect in that possession,

it shall be lawful for Her Majesty by Order in Council to direct, if it seems to Her Majesty in Council necessary or proper for carrying into effect the objects of this Act, that such Act or ordinance, or any part thereof, shall with or without modification or alteration be recognised and given effect to throughout Her Majesty's dominions and on the high seas as if it were part of this Act.

*Application of Act.*Application of
Act to offences at
sea or triable in
several parts of
Her Majesty's
dominions.

33. Where a person accused of an offence can, by reason of the nature of the offence, or of the place in which it was committed, or otherwise, be, under this Act or otherwise, tried for or in respect of the offence in more than one part of Her Majesty's dominions, a warrant for the apprehension of such person may be issued in any part of Her Majesty's dominions in which he can, if he happens to be there, be tried; and each part of this Act shall apply as if the offence had been committed in the part of Her Majesty's dominions where such warrant is issued, and such person may be apprehended and returned in pursuance of this Act, notwithstanding that in the place in which he is apprehended a Court has jurisdiction to try him:

Provided that if such person is apprehended in the United Kingdom a Secretary of State, and if he is apprehended in a British possession, the Governor of such possession, may, if satisfied that, having regard to the place where the witnesses for the prosecution and for the defence are to be found, and to all the circumstances of the case, it would be conducive to the interests of justice so to do, order such person to be tried in the part of Her Majesty's dominions in which he is apprehended, and in such case any warrant previously issued for his return shall not be executed.

Application of
Act to convicts.

34. Where a person convicted by a Court in any part of Her Majesty's dominions of an offence committed either in Her Majesty's dominions or elsewhere, is unlawfully at large before the expiration of his sentence, each part of this Act shall apply to such person, so far as is consistent with the tenor thereof, in like manner as it applies to a person accused of the like offence committed in the part of Her Majesty's dominions in which such person was convicted.

35. Where a person accused of an offence is in custody in some part of Her Majesty's dominions, and the offence is one for or in respect of which, by reason of the nature thereof or of the place in which it was committed or otherwise, a person may under this Act or otherwise be tried in some other part of Her Majesty's dominions, in such case a Superior Court, and also if such person is in the United Kingdom a Secretary of State, and if he is in a British possession the Governor of that possession, is satisfied that, having regard to the place where the witnesses for the prosecution and for the defence are to be found, and to all the circumstances of the case, it would be conducive to the interests of justice so to do, may by warrant direct the removal of such offender to some other part of Her Majesty's dominions in which he can be tried, and the offender may be returned, and, if not prosecuted or acquitted, sent back free of cost in like manner as if he were a fugitive returned in pursuance of Part I of this Act, and the warrant were a warrant for the return of such fugitive, and the provisions of this Act shall apply accordingly.

Fugitive Offenders Act.

Application of Act to removal of person triable in more than one part of Her Majesty's dominions.

36. It shall be lawful for Her Majesty from time to time by Order in Council to direct that this Act shall apply as if, subject to the conditions, exceptions, and qualifications (if any) contained in the Order, any place out of Her Majesty's dominions in which Her Majesty has jurisdiction, and which is named in the Order, were a British possession, and to provide for carrying into effect such application.

Application of Act to foreign jurisdiction.

37. This Act shall extend to the Channel Islands and Isle of Man as if they were part of England and of the United Kingdom, and the United Kingdom and those islands shall be deemed for the purpose of this Act to be one part of Her Majesty's dominions; and a warrant endorsed in pursuance of Part I of this Act may be executed in every place in the United Kingdom and the said islands accordingly.

Application of Act to, and execution of warrant in United Kingdom, Channel Islands, and Isle of Man.

38. This Act shall apply where an offence is committed before the commencement of this Act, or, in the case of Part II of this Act, before the application of that part to a British possession or to the offence, in like manner as if such offence had been committed after such commencement or application.

Application of Act to past offences.

Definitions and Repeal.

39. In this Act, unless the context otherwise requires,—
The expression "Secretary of State" means one of Her Majesty's Principal Secretaries of State:

Definition of terms.

Fugitive
Offenders Act.

The expression "British possession" means any part of Her Majesty's dominions, exclusive of the United Kingdom, the Channel Islands, and Isle of Man; all territories and places within Her Majesty's dominions which are under one Legislature shall be deemed to be one British possession and one part of Her Majesty's dominions:

The expression "Legislature," where there are local Legislatures as well as a central Legislature, means the central Legislature only:

The expression "Governor" means any person or persons administering the Government of a British possession, and includes the Governor and Lieutenant Governor of any part of India:

The expression "constable" means, out of England, any policeman or officer having the like powers and duties as a constable in England:

The expression "magistrate" means, except in Scotland, any justice of the peace, and in Scotland means a sheriff or sheriff substitute, and in the Channel Islands, Isle of Man, and a British possession means any person having authority to issue a warrant for the apprehension of persons accused of offences and to commit such persons for trial:

The expression "offence punishable on indictment" means, as regards India, an offence punishable on a charge or otherwise:

The expression "oath" includes affirmation or declaration in the case of persons allowed by law to affirm or declare instead of swearing, and the expression "swear" and other words relating to an oath or swearing shall be construed accordingly:

The expression "deposition" includes any affidavit, affirmation, or statement made upon oath as above defined:

The expression "Superior Court" means:

- (1) In England, Her Majesty's Court of Appeal and High Court of Justice; and
- (2) In Scotland, the High Court of Justiciary; and
- (3) In Ireland, Her Majesty's Court of Appeal and Her Majesty's High Court of Justice at Dublin; and
- (4) In a British possession, any Court having in that possession the like criminal jurisdiction to that which is vested in the High Court of Justice in England, or such Court or Judge as may be determined by any Act or ordinance of that possession.

[ss. 40, 41
and schedule,
rep. S.L.R.
Act, 1894].

COUNTRIES AND TERRITORIES IN WHICH THE
FUGITIVE OFFENDERS ACT IS APPLIED
IN VIRTUE OF THE
FOREIGN JURISDICTION ACT, 1890.

AFRICA.

CONTINENT OF AFRICA AND ADJACENT ISLANDS

15th. October, 1889, art. 79.

Limits of the Order.

The Continent of Africa, with the maritime and interior territorial waters thereof, and the islands adjacent thereto, and their territorial waters; excepting, places within the territorial jurisdiction of the Courts of any British Colony in Africa, or of any possession of any other non-African Power; Morocco, Tunis, Liberia, Liberia, and Zanzibar; any place subject to any other Order in Council; any place subject to the jurisdiction of the Egyptian Courts.

Groups for the purposes of Part II.

Mauritius

Places within the limits of the Order, and the African Colonies, other than Mauritius.

BRITISH CENTRAL AFRICA PROTECTORATE

11th. August, 1902, art. 13.

Limits of the Order.

The territories of Africa to the west and south of Lake Nyassa, bounded by North Eastern Rhodesia, German East Africa, and the Portuguese territories.

Group for the purposes of Part II.

Uganda, Zanzibar, the East Africa Protectorate, and all British possessions and Protectorates in Africa south of the Equator.

**Fugitive
Offenders Act
Orders
in Council.**

EAST AFRICA PROTECTORATE

11th August, 1902, art. 13.

Limits of the Order.

The territories bounded on the east and north-east by the Indian Ocean, the Juba River, the south-western boundary of the Italian sphere, on the north by the Abyssinian frontier, on the west by the Uganda Protectorate, and on the south by the German sphere, and includes all adjacent islands between the mouths of the Rivers Juba and Uмба.

Group for the purposes of Part II.

Uganda, Zanzibar, the East Africa Protectorate, and all British possessions and Protectorates in Africa south of the Equator.

UGANDA

11th. August, 1902, art. 13.

Limits of the Order.

The Central Province, the Rudolf Province, the Nile Province, the Western Province, and the Kingdom of Uganda.

Group for the purposes of Part II.

Uganda, Zanzibar, the East Africa Protectorate, and all British possessions and Protectorates in Africa south of the Equator.

ZANZIBAR

11th. May, 1906, art. 15.

Limits of the Order.

The islands of Zanzibar and Pemba, with the territorial waters thereof, and any islets within those waters.

Group for the purposes of Part II.

Zanzibar, the East Africa and Uganda Protectorates, British India, Aden, Mauritius, and all British possessions and Protectorates in Africa south of the Equator.

SOMALILAND PROTECTORATE

7th. October, 1899, art. 8.

Limits of the Order.

The territories bounded on the north by the Gulf of Aden, on the east and south by the territories under the Protectorate of Italy, and on the west by the territories of the Emperor of Ethiopia, and the French Protectorate of Jibuti.

Group for the purposes of Part II.

The Somaliland Protectorate, Aden, Zanzibar, the East Africa and Uganda Protectorates, and British India.

**Fugitive
Offenders Act
Orders
in Council.**

BRUNEI

24th. July, 1901, art. 33.

Limits of the Order.

The dominions of the Sultan of Brunei, and the islands and territorial waters thereof.

Group for the purposes of Part II.

Brunei, and the Straits Settlements.

CHINA, AND COREA

24th. October, 1904, art. 8.

Limits of the Order.

(i) The dominions of the Emperor of China, including the territorial waters thereof; but excluding places within the limits of the Wei-hai-Wei Order.

(ii) The dominions of the Emperor of Corea, including the territorial waters thereof.

Group for the purposes of Part II.

China, Corea, Wei-hai-Wei, and Hong Kong.

WEI-HAI-WEI

24th. June, 1901, art. 40.

Limits of the Order.

The island of Liu Kung, all the islands in the Bay of Wei-hai-Wei, and a belt of land 10 English miles wide along the entire coast of the Bay of Wei-hai-Wei, including the territorial waters.

Group for the purposes of Part II.

Wei-hai-Wei, and Hong Kong.

CYPRUS

see the Cyprus Order in Council, 5th July, 1881 Appendix, p. 276.

MOROCCO

28th. November, 1889, art. 33.

Limits of the Order.

The dominions of the Sultan of Morocco and Fez, including the territorial waters.

Fugitive
Offenders Act
Orders
in Council.

Group for the purposes of Part II.
Morocco, Gibraltar, and Malta.

PACIFIC OCEAN.

15th. March, 1893, art. 85.

Limits of the Order.

(i) Islands and places which are for the time being British settlements ;

(ii) Islands and places which are for the time being under the protection of His Majesty ;

(iii) Islands and places which are for the time being under no civilised government.

In the case of (ii) and (iii), only over British subjects, and foreigners and natives who have been on board a British ship, or otherwise have come under a duty of allegiance to His Majesty.

But excluding,

(a) Any place within the dominions which is within the jurisdiction of any Colonial Legislature ;

(b) Any place within the jurisdiction or protectorate of any civilised Power.

Until otherwise ordered, the jurisdiction is only to be exercised in—

(i) The groups of islands, with the dependencies and territorial waters thereof, known as—

The Friendly Islands.

The Navigators Islands, subject to the provisions of the Final Act of the Conference on the Affairs of Samoa, signed at Berlin, 4th June, 1889.

The Union Islands

The Phoenix Islands.

The Ellice Islands.

The Gilbert Islands.

The Solomon Islands, so far as they are not within the jurisdiction of the German Empire.

The Santa Cruz Islands.

(ii) Any seas, islands, and places which are not excluded as above, in the Western Pacific Ocean, within the following limits—

North, from 140° east longitude by the parallel 12° north latitude to 160° west longitude, thence to the Equator, and thence east to 149° 30' west longitude. East, by the meridian of 149° 30' west longitude.

South, by the parallel 30° south latitude.

West, by the meridian 140° east longitude.

The Secretary of State may add to or limit these limits.

The jurisdiction in the New Hebrides, including the Bankes Islands and Torres Islands, in accordance with the Convention with France of 20th October, 1906, is governed by the Order in Council, 2nd November, 1907.

Group for the purposes of Part II.

The limits of the Order and Fiji.

PERSIA

13th. December, 1889, art. 287.

Limits of the Order.

The dominions and territories of the Shah of Persia, excluding the Persian Coasts.

PERSIAN COAST AND ISLANDS

7th. May, 1907, art. 8.

Limits of the Order.

The coast and islands of the Persian Gulf and Gulf of Oman, being within the dominions of the Shah of Persia, and the territorial waters of Persia adjacent to the said coast and islands.

Group for the purposes of Part II.

The Persian coast and islands, and British India.

SIAM

4th. April, 1906, art. 74; not affected by the Siam Order, 28th, June, 1909.

Limits of the Order.

Siam and its dependencies.

Group for the purposes of Part II.

Siam, and the Straits Settlements.

TURKEY

8th. August, 1899, art. 52.

Limits of the Order.

The dominions of the Sublime Ottoman Ports (excepting Tunis).

As respects Egypt, they do not extend to any place south of the 22nd parallel of north latitude.

Group for the purposes of Part II.

The Ottoman dominions, including Egypt: Malta, and Gibraltar.

GROUPS OF COLONIES AND PLACES UNDER
BRITISH JURISDICTION FOR THE
PURPOSES OF PART II
OF THE FUGITIVE OFFENDERS ACT,
CREATED BY ORDER IN COUNCIL.

General form of preamble to the Orders ;—

Whereas by reason of the contiguity of . . . and the frequent intercommunication among them, it seems expedient to Her Majesty, and conducive to the better administration of justice therein, the Part II of Fugitive Offenders Act, 1881, should apply to the said Colonies, . . .

On and after the . . . Part II of the Fugitive Offenders Act, 1881, shall apply to the group of British possessions hereunder mentioned ; . . .

Order 23rd. July, 1883

New South Wales,
Victoria,
South Australia,
Queensland,
Tasmania,
Western Australia,
New Zealand, and
Fiji.

} The Commonwealth of Australia.

Order, 29th. November, 1884.

Jamaica,
Turks and Caicos Islands,
British Guiana,
Trinidad and Tobago,
The Leeward Islands,

Order, 29th. November, 1884—continued.

Barbados,
St. Vincent,
Grenada,
St. Lucia,
The Bahamas, and
British Honduras.

**Fugitive
Offenders Act
Orders
in Council.**

Order, 12th. December, 1885.

Her Majesty's East Indian Territories.
Ceylon.
The Straits Settlements.

Order, 12th. December, 1885.

The Straits Settlements,
Hongkong.
Labuan.

SOUTH AFRICAN POSSESSIONS AND TERRITORIES

Order, 8th. August, 1901.

I.—The Fugitive Offenders Act, 1881, shall apply as if* the territories named in the 1st. schedule were a British Possession. * [*query, each of*]

Schedule I.

The Bechuanaland Protectorate.
Southern Rhodesia.
Barotziland, North Western Rhodesia.
British Central Africa Protectorate.
North Eastern Rhodesia.
Swaziland (*O. in C., 1st. June, 1907*).

II.—Part II of the Fugitive Offenders Act, 1881, shall apply to the colonies, possessions, and territories mentioned in the 2nd. schedule† (probably as a group).

Schedule II.

The Colony of the Cape of Good Hope The Colony of Natal. Basutoland. The Orange River Colony. The Transvaal.	}	United South Africa.
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† Compare, this with the West African Order, where Part II is applied to the colonies and territories mentioned in the 1st. and 2nd. schedules.

**Fugitive
Offenders Act
Orders
in Council.**

WEST AFRICAN POSSESSIONS AND TERRITORIES

Order, 11th. June, 1902.

I.—The Fugitive Offenders Act, 1881, shall apply as if each of the territories named in the 1st. schedule were a British possession.

Schedule I.

The Gambia Protectorate.
The Sierra Leone Protectorate.
The Lagos Protectorate.
The Northern Territories of the Gold Coast.
Northern Nigeria.
Southern Nigeria.

II.—Part II of the Fugitive Offenders Act, 1881 shall apply to the colonies, possessions, and territories mentioned in schedules 1 and 2 (probably as a group).

Schedule II.

The Gambia.
Sierra Leone.
The Gold Coast.
Ashanti.
Lagos.

INDEX.

- ABDUCTION,**
extraditable offence, 132.
- ACCESSORIES,**
liability of to be surrendered, 147
as dealt with in the treaties, 210
punishment of, 148
after the fact, 149
- ADMIRALTY,**
extraditable offences committed within jurisdiction of, 137, 139, 140,
141, 145
- ALIBI,**
how far prisoner may prove, 103
- ALIEN,**
entitled to share in liberty of the subject, 6
- ALTERING MONEY, &c.**
extraditable offence, 132
- ANARCHIST,**
offences by not political, 57
- APPEAL,**
none from magistrate, 155
indirectly on *habeas corpus*, 156
none from refusal to grant *habeas corpus*, 158
- Argentine,*
machinery clauses of treaty analysed, 260
- ARREST,**
for extradition requires statutory sanction, 32
of fugitive returned to England, does not require statutory sanction
33, 37
- ARSON,**
extraditable offence, 132
- ASSAULTS,**
extraditable offences, 142
- ATTEMPTS,**
extradition for, 132
to murder, extraditable offence, 132
- Australia,*
procedure in case of surrenders to, 78, 184

- Burmah*,
 extradition arrangement in regard to Siam, 189
- Canada*,
 extradition governed by local law in, 181, 185
 procedure in case of surrenders to, 184, *Appdx.* 269
 special clause in treaties as to, 185
 special Order in Council, 185
 expenses of extradition to and from Netherlands, 186
 extradition by without agreement, 16, 192
 to China, 194
 extradition law of, *Appdx.* 263
- CARNAL KNOWLEDGE,
 difficulties arising from English law of defence, 230
 variations in age limit, consequences of, 230
 English law as to, 230
- Channel Islands*,
 Extradition Act extends to as part of the United Kingdom, 42
 Fugitive Offenders Act " " " 277
- CHARTERED COMPANIES,
 territories of not included in definition of "British possession," 177
- CHILD-STEALING,
 extraditable offence, 132
- CHILDREN,
 provisions in treaties as to crimes against, 211
- China*,
 unilateral arrangement with considered, 73
 Treaty of the Bogue, 73
 Treaty of Tientsin, 73, 193
 Hong Kong legislation as to, 73, 187, 189, *Appdx.* 287
 old and new ordinances, 193, 194
 extradition to from other parts of the dominions, 194
 position of British subjects offending in, 195
 operation of Fugitive Offenders Act in, 195
 British subjects offending elsewhere, escaping to China, 195
 position of foreigners in, offences in Hong Kong, 195
 " " in Hong Kong, offences in China, 195
- Clarke, Sir Edward*,
 quoted as to common law duty to extradite, 14
 as to evidence for defence before magistrate, 103
 as to law of accessories, 149
- CIVIL PROCEEDINGS,
 effect of pendency of, 254
- COINAGE OFFENCES,
 extraditable offences, 140
- COLONIES,
 Extradition Act extends to, 42
 definition of, 177

COLONIES—*continued*

- naturalization in, effect on extradition, 66
- independence of for legislation, 178, 275
- application of Act to by Order in Council, 177
- process of substitution, 177.
- changes in machinery for surrender, 178
- by and to whom requisition to be presented, 178
 - where foreign country has no consul, 179
- exercise of powers by Governor, 179
- warrant of Secretary of State not required, 179
- imprisonment in colonial prisons, 180
- powers of colonial Judges, 180
- application for *habeas corpus* in, 180
- where Act applied with local modifications, 181, 186
- where Act not applied, local legislation. 181, 185
- application of treaties to, 182
 - saving of laws of British colonies, 182
 - recognition of colonial legislation, 183.
- requisitions from, 184
 - „ to foreign colonies, 184
- special arrangements, in, 187
- unilateral arrangements governed by local legislation, 188
- bilateral colonial arrangements, 188

COLONIES, FOREIGN,

- constituent parts of foreign State, 179
- by whom requisition from to be made, 179
- requisitions to and from British colonies, 181

COMMISSIONERS, REPORT OF,

- on the motives for extradition, 17
- recommend that reciprocity be not insisted on, 18
- on the surrender of subjects, 18
- on the offences which should be extraditable, 20
- on the exclusion of political offenders, 20
- on other offences which should be excluded, 22
- on the quality and degree of extradition offences, 22
- extradition to be confined to offences known to English law, 23
- on trial after surrender for other offences, 25
- on transit through third State, 27
- on necessity for speedy arrest, 28
- Mr. Torrens' dissent, 27

COMMITTAL,

- resemblance to English procedure ceases after, 95
- to be justified by English law, 99
- principle governing, 150
- surrender not to be carried out for 15 days after, 155
- prisons in case of crime committed at sea, 167
 - „ „ of invalid fugitives, 168

COMMON LAW,

- principles of personal liberty, 6
- infringed by errors in procedure, 91

COMPANY LAW,

- offence against, extraditable offences, 132

COMPLAINT,

for issue of summary warrant, 86

CONCURRENT JURISDICTION.

where it exists criminal is fugitive from both countries, 70
 acts committed in two countries, 71
 doctrine of continuing intention, 71
 extradition in cases of, 71
 how far obligation to surrender remains, 72
 provisions in treaties as to previous trial and prescription based on, 242
 trial, discharge, or punishment in requesting State, 243
 " " " in requested State, 247
 prescription by law of requesting State, 244
 " " of requested State, 247
 pardon granted in requesting State, 249
 " " requested State, 249
 pleas of former trial extended to foreign trials, 245
 position in jurisprudence of law of country applied to, 247, 249
 under territorial and extra-territorial laws, 247
 under territorial laws of both countries, 238
 surrender probably governed by convenience, 248
 requisitions by both States to third State, 257

CONSPIRACY TO MURDER,

extraditable offence, 132

CONSUL-GENERAL,

included in "diplomatic representative," 79

CONTEMPT OF COURT,

punishment for after surrender for extradition offence, 173

CONTRAVENTION,

use of term in continental law, 218, 220

Contumace, Conviction par,

fugitive to be treated as accused person only, 129, 259

Corea,

modified form of extradition in, 196

CONVENIENT EQUIVALENTS,

meaning of the term, 113, 151
 treaty lists of crimes composed of, 205

CONVICED FUGITIVE,

treated in the same way as accused fugitive, 8, 87, 127
 issue of summary warrant in case of, 86
 provisions in treaties as to, 87, 259
 proof of conviction, 128
 authentication of certificate of, 97
 if *par contumace*, treated as accused only, 129, 259

COUNTERFEITING MONEY, &c.,

extraditable offence, 132

CRIME,

"locality of," explained, 7
 exceptions to, 10

Cyprus,

extradition in by Order in Council, independently of agreement, 16, 190
rights acquired by England in, 191
surrender to China, 194

DEATH PENALTY,

countries which refuse to surrender for crimes subject to, 211

DEFILEMENT OF GIRLS,

extraditable offence, 143

Denmark,

convention of 1862, Act giving effect to, 29, 21

DEPOSITIONS,

taken abroad to be received, 96, 100
how far governed by English rules of evidence. 97
recognition of foreign law of evidence, 97
when taken in absence of accused, 98

DESERTERS,

reciprocal extradition of under Merchant Shipping Act, 197
from Portuguese ships, 198

DIPLOMATIC REPRESENTATIVE,

meaning of, 79
effect of absence of, 79

DISCHARGE,

left to magistrate's judicial discretion, 104
subsequent application for surrender, 104
principle governing, 150, 161
treaty provisions as to if evidence not produced in 2 months, 162
remand to hear other charges, 162

DOCUMENTS,

authentication of, 97

EMBEZZLEMENT,

extraditable offence, 132
by clerks, 135

ENGLISH LAW,

governs extradition offences, 23
to exclusion of Scotch and Irish law, 36
governs proceedings before magistrate, 83
reasons for the rule, 84
offence cognizable by to be proved, but need not be set out in foreign
warrant, 109
extradition limited to offences under, 109.
Judge-made interpretation of the rule, 111
Lord Russell's analysis of the rule, 122
how far foreign law may be enquired into, 124

ESCAPE,

how far English law applicable to convicted fugitives, 86
provisions of Act as to, 164

EVIDENCE,

- taken abroad to be received, 96
- proof of foreign documents and depositions, 96
 - authentication of " 97
 - effect of " 98
- to justify committal by English law, 99
- what evidence the magistrate may receive, 101
 - the same as would be received in an English case, 103
 - what is not so receivable, but receivable under the Act, to be included in report, 103
- to shew that offence not within the treaty, 152
- abroad, is directed to commission of foreign crime, 153
- taken abroad, hearsay, how far admissible, 153
 - " admissibility depends on foreign law, 154
- of prisoner, 159
- taken in England for criminal case abroad, 168
 - political prosecutions excluded, 169
 - in presence or absence of accused, 169
 - reciprocal provisions in treaties as to, 170
- difficulties arising from differences in law of, 229
- case where "evidence produced" must justify committal by both States, 230.
- delays in treaties for producing evidence after requisition, 268

EXPENSES,

- of extradition, provisions in treaties as to, 273

EXPLOSIVE SUBSTANCES ACT,

- offences against not extraditable, 234

EXTRADITION,

- at variance with common law principles, 5
- Governments powerless to punish criminals who escape, 7
- a political not a common law duty, 8
 - absence of international standard of criminal law, 9
 - the common law duty examined, 11
- King and Parliament must combine to authorise, 15
- Royal Commission on, 17
- relation of Parliament to, 29
- the law prior to 1870, 30
- how far legislation necessary, 32
- general restrictions on, 42
- none in time of war, 79
- limited to offences under English law, 109
- general principle of, 118
- proceedings auxiliary to foreign proceedings, 126, 151
- proceedings are "criminal", 158
 - from shipboard, 166
 - in Protectorates, 188
- unilateral arrangements, 15, 188
 - how far Order in Council necessary, 188
- to *United Kingdom*,
 - how far Act applicable to, 15, 30, 170
 - liability of criminal to prosecution on arrival, 171
 - but limited by s. 19 to extradition crime, 171
 - s. 19 compared with restrictions of s. 3(2), 172
 - does not apply to contempt of Court, 173

EXTRADITION ACT,

- applies to surrenders from England, 6, 29
- preamble considered, 29, 33
- how it differs from earlier special Acts, 31
- its recognition of the prerogative, 32
- ignores reciprocity, 34
- area of application of, 42
- applies to offences committed before an Order applying it, 64
- "any person" may be surrendered, 65

EXTRADITION CRIME,

- first created by Act of 1870, 32
- variations in treaty lists, 201,
- reference to law of foreign country in foreign text, 224
 - „ law of England in foreign text, 224
 - „ law of foreign country in English text, 226
 - „ the laws of both States, 228
- by statute and treaty combined, 231
 - effect of want of correspondence in crimes in the two lists, 232
- difficulty of the ultimate reference to English law, 233
- effect of amending or substituted Acts, 233
- Criminal Law Amendment Act, 1885, analysed, 234
- Post Office Protection Act, 1884 analysed, 234
- as dealt with in the treaties.—*
- turpitude of offence as considered in the treaties, 216
 - general limitations, 216
 - use of "crime" and "offence," 216
 - special limitations, 219
- references to crimes which must be indictable, 212
- meaning of a crime "made criminal by any law for the time being in force," 220
- references to maximum and minimum penalties, 221
 - offences punishable by maximum of 1 year, 221
 - actual sentence disregarded, 222
 - offences punishable by minimum of 1 year, 222
 - offences punishable by more than 1 year, 222

EXTRA-TERRITORIAL LAW

- extension of the criminal law, 10
- existence of will not be presumed, 75

FALSE IMPRISONMENT,

- extraditable offence, 133

FALSE PRETENCES,

- obtaining money or goods by, 137

FALSIFICATION OF ACCOUNTS,

- extraditable offence, 136

Federated Malay States,

- extradition to from Straits Settlements, 187

FINES,

- possibility of extradition for sentences considered, 130.

FOREIGN ENLISTMENT ACT,

- offences against not extraditable, 235

- FOREIGN GOVERNMENT,**
locus standi of in proceedings, 160
- FOREIGNER,**
 entitled to apply for *habeas corpus*, 155
- FORGERY,**
 extraditable offences, 139
 various definitions of in treaties, 210
- France,*
 Act of 1843 giving effect to convention with, 29, 31
 provisions of treaty as to further evidence, 161
 arrangement with as to extradition with Tunis, 189
 Note on law of as to sub-division of offences, 217
- FRAUD,**
 by bailees and others, extraditable offence, 132
 by bankers and others, ,, 136
- French Guiana,*
 extradition arrangement with British Guiana and Trinidad, 187, 189
- French India*
 extradition arrangement with British India, 187, 189
- FUGITIVE,**
 who is, where crime committed in two countries, 70
 may give evidence before magistrate, 105
- FUGITIVE OFFENDERS ACT,**
 germs of in old cases, 13
 inception of in s. 15 of Habeas Corpus Act, 15, 274
 bail under 94
 its joint operation with Extradition Act, 189
 extended to Protectorates, 190
 Act of 1843, 274
 based on colonial independence, 274
 no corresponding legislation in foreign colonies, 275
 general scheme parallel with Extradition Act, 276
- Part I.*
 returnable offences, 276
 definition of imprisonment with hard labour, 276
 area of application of Act, 277
 British Islands treated as a whole, 277
 definition of British possessions, 277
 extension of Act to Protectorates and places under foreign jurisdiction, 278.
 executive authorities under the Act, 278
 procedure by endorsed warrant, 279
 endorsing authorities, 279
 provisional warrant, 280
habeas corpus, 281
 discharge if fugitive not conveyed away in one month, 281
 ,, if not prosecuted in 6 months, 281
 order refused in trivial cases, 281
 committing authorities, 282

FUGITIVE OFFENDERS ACT,—*continued.**Part II.*

- inter-colonial backing of warrants, 282
 - offences not limited, 283
- fugitive returned without hearing case, 283
- backing of summons to witnesses, 284
- provisional warrant, 284
- groups of possessions, 285
- special procedure in certain Protectorates as to *habeas corpus*, 286
- search warrants, 287
- conveyance by sea, 287
 - meaning of British ships, 287
 - duty of master of ship, 287
- escape, 288
- depositions, 288
- false evidence, 288
- powers of Colonial Legislatures, 289
- trial of offences within jurisdiction of two colonies, 290
- application of Courts (Colonial) Jurisdiction Act, 291
 - trial in colony for offences on high seas, 291
- convicted persons, 291
- offences committed on borders on two colonies, 291
 - ” on journey between two colonies, 291
- decisions under the Act, 292
 - review of magistrate's decision, 293, 300
 - bail, 293
 - Concurrent jurisdiction of Consular and Colonial Courts, 297
 - offence by colonial law to be proved, 297
 - trial for other offences than the one on which returned, 301

Germany,

- arrangement with as to German Dependencies, 189
- law of as to “crimes” and “delicts,” 218
- Note on extra-territorial provisions of criminal law of, 252

GIRLS, CRIMES AGAINST,

- provisions in treaties as to, 211.
- how far offences under Criminal Law Amendment Act, 1885, extraditable, 234

GOVERNOR,

- exercise of powers of Secretary of State by, 179
- definition of, 182
- reference of case to Secretary of State, 183
- foreign, recognition of, 178

Grotius,

- on common law duty to extradite, 140

Habeas Corpus,

- right of fugitive to, 8
- legality of arrest the only question on, 14, 124, 156
- rearrest after release on, 76
- no appeal from refusal to issue writ, 90, 158
- enquiry into foreign law on, how far justified, 125

Habeas Corpus,—continued.

- prisoner's right to apply for, 155
- writ independent of Habeas Corpus Act, 155
- practice on applications for, 159
- right to apply for in colonies, 180
- not to issue into colonies where local jurisdiction to issue, 180
- references to in treaties, 200, 261, 265

HEARING,

- rules as to evidence at, 98
- to be conducted as if an English case, 151
- facts to be transplanted to England, 151

HIGH SEA OFFENCES,

- extraditable offences, 133
- jurisdiction of magistrate as to, 165
- provisions in treaties as to, 214

HOMICIDE,

- provisions in treaties as to, 210

Hong Kong, see also China.

- Ordinance modifying Act as in force in, 181, 187
- extradition arrangement with China, 187, 189
- extradition from to Macao, 187, 189, 193
- ” to British North Borneo, 187, 193
- Ordinance applying to Chinese extradition, 194
- magistrate to give notice of intention to discharge, 162

HOUSE-BREAKING,

- extraditable offence, 134

India,

- Extradition Act extends to, 42
- saving of treaties with the Native States, 42, 187
- ” ” with coterminous Asiatic States, 42
- extradition arrangements with French India, 187, 189.

INDICTABLE OFFENCE,

- meaning of, 131
- effect of limitation as to in schedule of 1873, 131
- limitation not referred to in the treaties, 216
- no corresponding continental term, 218
- analogous provision in Austrian treaty, 218
- special reference to in certain items of lists of crimes, 219

INFORMATION,

- in regard to issue of summary warrant, 86

“Instruction”

- of prisoner, its bearing on limitation of trial to extradition offence, 26
- recognition of in some treaties, 249, 261
- consequences of, 262

INVALID,

- fugitive, jurisdiction of magistrate in case of, 167

Ireland,

- position of in extradition, 36
- trail in after surrender, 36
- jurisdiction of stipendiary magistrate in case of crimes committed at sea, 167
- ” ” ” ” ” invalid fugitives, 168

Isle of Man,

- Extradition Act extends to as if part of United Kingdom, 42
- Fugitive Offenders Act extends to as if part of, 277

JUSTICE OF THE PEACE,

- jurisdiction of as to issue of summary warrant, 85, 89

JUSTIFICATION,

- how far evidence of receivable by magistrate, 104

KIDNAPPING,

- extraditable offence, 133

KING-MADE LAW,

- meaning of term, 37
- notified by Order in Council, 37

LARCENY,

- extraditable offence, 132
- by clerks, servants, and others, 135

LIBERTY,

- right to invaded by extradition, 6
- shared by foreign criminals who seek asylum, 7
- cases of illegal infringements of where no redress, 9, 91
- cannot be infringed by King's order, 15
- not infringed by arrest after surrender to England, 33

Locus Regit Actum,

- extra-territorial laws exceptions to maxim, 10
- special reference to English law in extradition does not conflict with,
111

London,

- extraditing centre for United Kingdom, 36

Macao,

- extradition to from Hong Kong, 187, 189, 193

MAGISTRATE,

- jurisdiction of requires legislative sanction, 33
- has no powers other than those given by the Act, 46
- cannot alter nature of proceedings before him into trial, 76
- report of, powers of Secretary of State with regard to, 82
- to issue warrant on Secretary of State's order, 83
- procedure before subject to English law, 83
- necessity for recourse to, 84
- offence imagined to have been committed in England, 84

MAGISTRATE,—continued.*Summary procedure before,*

- issue of summary warrant before requisition received, 85
- no conditions attached to application, 85
- should be taken by foreign Government, 85
- foreign warrant need not have been issued, 85
- evidence necessary, 86
 - a question of judicial discretion, 86
 - in case of convicted fugitive, 86
- issued on facts alone, 87
- report to Secretary of State, 87
- remedy where warrant refused, 88
- requisition required after issue, 89
 - or prisoner discharged, 93
- procedure not recognised by all treaties, 92
 - whether warrant illegal in such cases considered, 266
- strictness not required in warrant, 93
- powers to be the same as if offence committed in England, 94
 - how far this applies to delivery of property seized, 271
- may receive evidence that offence political, 101
 - " " " not extraditable, 101
 - but cannot decide in either case, 101, 104
- evidence as to prisoner's identity, 101
 - " " " nationality, 102
 - " " " locality of crime, 102
 - " " " alibi, 103
 - " " " justification, 104
- generally to take evidence which would be taken in an English case, 103
- to receive evidence tendered by prisoner, 105
- on the hearing is independent of Secretary of State, 105
- cannot interpret the treaty, 152
- not to enquire whether English equivalent crime committed, 152
- to receive but scrutinise foreign depositions, 153
- decision of is judicial, 154
- cannot continue case begun before another magistrate, 154
- jurisdiction depends on whether evidence justifies committal, 156
- may be ordered to take evidence for foreign criminal cases, 169
- after order of committal is *functus officio*, 271

MALICIOUS DAMAGE,

- to property generally, 138
- to railways, 138
- to ships, 138
- as dealt within the treaties, 219

Mill, J.S.,

- his definition of political offences, 51

MINIMUM PENALTIES,

- Note on English law as to, 223

MISTAKE,

- in preliminary proceedings, how far prisoner may avail himself of, 9, 70, 78, 92
- if requisition informally presented, 79

MURDER,

- extraditable offence, 132
- abroad, difficulties arising from law of evidence, 229

NATIONALITY,

- meaning of "native-born," 67
- of party aggrieved immaterial, 78
- how far magistrate may receive evidence of, 102

NATURALIZED SUBJECT,

- not referred to in Act, 65
- put on the same footing as subjects in treaties, 65
 - except where he has not ceased to be subject of former State, 66
- where naturalization obtained in the colonies, 66
- surrender of by treaty, 237
- effect of naturalization acquired after commission of crime, 237
- how far covered by refusal to surrender subjects, 238

Netherlands,

- treaty, provision as to attempts on life of Sovereign, 47, 211

ORDER IN COUNCIL,

- embodies terms of the treaty, 36
- notifies King-made law, 37
- application of Act by, 37
- when required in the case of treaties, 38
- necessary only for surrenders by England, 38
- limitations, conditions, and qualifications in, 39
- to be laid before Parliament, 40
- conditions precedent to issue of, 40
- publication and effect of, 40
- validity of not to be questioned, 41, 43
- revocation of, 42
- application of Act to colonies by, 177
- not necessary for unilateral extradition to colony, 188
- could apply Act to unilateral extradition from England, 188
- sometimes used for bilateral colonial arrangements, 188
- necessary for extradition in Protectorates, 189
- the Cyprus Order, 190
- list of, extending s. 238 of Merchant Shipping Act to foreign countries, 198

Pacific Islands,

- application of Fugitive Offenders Act to, 196

PARDON,

- effect of omitted from treaties, 244
- effect of when granted in State applied to, 249

PARLIAMENT,

- has nothing to do with treaties, 15
 - but assistance required if violation of the law involved, 15
- its position in extradition, 29
- would not sanction action by foreign police in England, 34
- sanctions machinery for surrender, 35
- does not authorise surrender to England, 171
- cannot repeal a treaty, 174
- effect of repeal of enabling Act, 174

PARTY AGGRIEVED,

- may probably apply for summary warrant, 85, 90
- extradition at request of impossible, 90

- PENAL LAWS,
of other countries not recognised, 77
- PERJURY,
extraditable offence, 133
- PERSON, OFFENCES AGAINST THE,
extraditable offences, 141
- PIRACY,
an international offence, 10
definition of, 75
concurrent jurisdiction in case of, 72
an extraditable offence, 133
provisions in treaties as to, 214
- POLITICAL OFFENCES,
report of Commissioners as to, 21
restrictions as to surrender for, not applied to surrender to England, 45
provisions of Act relating to, 45
described as offences of a political character, 45
meaning of explained in the decisions, 50
reasons for adoption of this term, 46
crimes political in their nature not in schedule, 46
ordinary crimes committed politically not extraditable, 47
requisition made "in fact with a view" to punish for, 47, 59
simple construction of this expression, 48
limited to political offences, 48
Castioni's case considered, 50
Mill's definition of, 51
Sir Fitzjames Stephen's definition of, 53, 55
the subject considered generally, 55
possibility of having to disclose political secrets does not make the
offence political, 58
other offences by political offenders, 58
evidence as to may be given to the magistrate, 101
but he may not decide the question, 104
variations in provisions of treaties as to 239
acts "connected with" political offences, 239
decision left to requested State, 240
officials who are to decide, 240
- Portugal,*
surrender of deserters from Portuguese ships, 198
- POST OFFICE OFFENCES,
how far extraditable, 234
- PREROGATIVES,
how they are involved in extradition, 15
recognised by the Act, 32
how affected by schedule of offences, 35
how far extended to colonies, 180
- PRESCRIPTION,
of offence in requesting State, 244
,, in requested State, 249
exemption from punishment must have been acquired by fugitive, 251
where offence prescribed during pendency of proceedings, 255

- PROTECTORATES,
governed under Foreign Jurisdiction Act, 189
extradition in by Order in Council, 189
Fugitive Offenders Act extended to, 190
not included in definition of colony, 177
- RAPE,
extraditable offence, 132
- RATIFICATION,
clauses in treaties, 40
- RECAPTURE,
law as to, 164
principle of hot pursuit, 164
- RECEIVING STOLEN PROPERTY,
extraditable offence, 137
property stolen abroad, Act of 1896 based on same principle as extradition, 126
- Récidive*,
foreign law as to, 132
- RECIPROCITY,
ignored in Act, 34
as to restrictions on surrender not insisted, 43
- REMAND,
power of magistrate as to, 94
bail, 94
- REPEAL,
clause of Act considered, 174
new procedure fitted to old treaties,
- RESTRICTIONS ON EXTRADITION,
considered generally, 42
operation of, 43
Order in Council conclusive evidence of compliance with, 43
do not apply to surrenders to England, 43
trial to be limited to extradition offence, 60
existing trials to be completed, 63
surrender not to be within 15 days of committal, 63
- REQUISITION,
necessity for, 77
foreign Government takes no step after, 78
the basis of all proceedings, 78
presented by Diplomatic Representative, 79
powers of Secretary of State on receipt of, 80
required after issue of summary warrant, 85
by British Government, Act does not deal with, 78
- REVENUE LAWS,
of other countries not recognised, 67

- RIGHT OF ASYLUM,
 objection to the term, 6
 how far legitimate in case of political offences, 46, 50
- ROBBERY WITH VIOLENCE,
 extraditable offence, 133
- SACRILEGE,
 extraditable offence, 134
- SCHEDULE OF THE ACTS,
 reference in to English law, 130
 special features of schedule of 1873, 131
 of 1870, offences under, 132
 of 1873, " 133
- Scotland,*
 position of in extradition, 36
 trial in after surrender, 36
 jurisdiction of sheriffs as to issue of summary warrant, 85
 " " in case of crimes committed at sea, 167
 " " " invalid fugitives, 168
 definition of extradition crimes ignores Scotch law, 121
 surrender of fugitives, referred to English law, 121
- SEAL,
 foreign, judicial notice of, 97
- SECOND OFFENCES,
 extradition for, 132
- SECRETARY OF STATE,
 powers of on receipt of requisition, 80
 when order to magistrate may be refused, 80
 references in Act to, 81
 powers of on magistrate's final report, 82, 152
 may order warrant to be cancelled, 82
 may withdraw order to magistrate at any time, 83
 report to of issue of summary warrant, 87, 152
 how far he may review magistrate's decision, 87
 order to another magistrate if warrant refused, 88
 general words sufficient in order to magistrate, 93
 to decide whether offence by English law committed, 152
 bound to comply with treaty obligation, 163
 but may extend period, 163
 notice to of application for discharge after 2 months, 165
 order to other magistrate in case of crimes committed at sea, 167
 " " " invalid fugitives, 167
 request " " " for evidence to be taken for foreign criminal matters, 169
 requisitions to from foreign colonies, 179
 no warrant from in colonial extradition, 179
 references to by colonial Governor, 183
 requisition by for surrender to colony, 184
- SEDITION,
 not an extraditable offence, 46

SHIPS,

- warrant for surrender extends on board, 164
- part of State of flag, 165, 166
- part of territory, claim of foreign countries as to, 165, 166
- extradition from, 166

Siam,

- treaty as to Protected Malay States, 187
- extradition with Burmah, 189

SLAVE TRADE,

- offences, extraditable, 147
- provisions in treaties as to, 215

SOVEREIGN,

- offences against, when extraditable, 46
- non-political attempt on life of, 47

Spain,

- unilateral arrangement with as to surrender of subjects, 65
- representation of Government by Law Officers, 161

Stephen, Sir Fitzjames,

- his definition of political offences, 53, 55

STIPENDIARY MAGISTRATE,

- jurisdiction of in case of crimes committed at sea, 167
- „ „ invalid fugitives, 168

Straits Settlements,

- extradition to foreign countries to which the Act does not apply, 16,
187, 192
- surrender to Federated Malay States, 187
- surrender to China, 194

SUBJECTS, *see also* NATURALIZED SUBJECT,

- surrender of British not prohibited by Act, 64
- „ foreign not excluded from Act, 64, 68
- „ depends on treaty, whether absolute or discretionary, 65
- unilateral arrangements as to, 65, 235
- onus on prisoner to prove non-liability to surrender, 67
- provisions in treaties as to surrender of, 235
- variations in discretionary clause, 236

SUBMARINE TELEGRAPH ACT,

- offences against not extraditable, 234

SUBORNATION OF PERJURY,

- extraditable offence, 133

SURRENDER,

- not to be within 15 days of committal, 63
- order for, 163
 - extends to British ships, 164
 - and to conveyance on to ships of requesting State, 164
 - but not on to foreign ships, 165
- conveyance out of England, within 2 months of committal, 165

SUSPENSION OF PUNISHMENT,

in foreign State, effect of, 245, 250
not equivalent to prescription, 250

Switzerland,

punishes criminals of other countries in lieu of surrender, 10, 235
unilateral arrangement with as to surrender of subjects, 65
provisions of treaty as to application for summary warrant, 92
representation of Government by Law Officers, 161
provision in treaty as to absence of consul in colony, 183
provision as to contesting treaty, 267

TERRITORIALITY OF THE LAW,

extradition at variance with, 5

THREATS,

with intent to extort, extraditable, 133

Tientsin, Treaty of, see China

TIME TABLE,

for surrenders from England, 269

Tonga,

unilateral arrangement with, 189, 196

TRANSIT,

through third State, provisions as to, 27, 163
costs of, 273

TREASON,

not extraditable, 46

TREATIES, THE

combined with statutes essential to extradition, 16, 29
embodied in Order in Council, 36
published in Gazette for information only, 37
enforced by Courts as law, 44, 163
obligation of made effective by s. 6, 64
 " is positive, 80
bilingual lists of crimes in, 109
governs surrender to and surrender by each country, 113
act charged must come within both definitions, 113
 but may have a different name in each, 114
 and need not be the corresponding item, 124
general principle of extradition, 118
 supported by forms of warrants, 119
interpretation of treaties in one language, 120
effect of repeal of enabling Act, 174
how terminated, 175
application of to colonies, 182
position of in scheme of extradition, 199
provisions of Act repeated in, 200
 ensures permanent procedure on both sides, 201
want of uniformity, 202
 causes of, 204

TREATIES, THE—*continued.*

- questions dealt with which are not touched by the Act, 203
- grouping of, 203
- the absolute agreement to surrender, 205
- extradition crimes by, 205
 - the "convenient equivalents," 205
- difficulty of finding uniform definitions under English and foreign laws, 206
- general clause following special lists in some treaties, 208
- variations in the definitions of crimes, 208
- principles of criminal law of extradition deducible from, 215
 - " governing the turpitude of the offence, 216
- contemplate amendments of the law, 221.
- provisions as to surrender of subjects, 235
 - " naturalized subjects, 237
 - " political offences,
 - " previous trial and discharge, 241
 - " pending trial in requested State, 241
 - " prescription of punishment, 241
 - " pending proceedings for other offences, 253
 - " civil proceedings, 254
 - " where offence prescribed pending proceedings, 255
 - " requisitions by several States, 256
 - " limitation of trial to extradition offence, 257
 - " surrender of convicted persons, 259
- machinery clauses of, 259
 - short form considered, 260
 - long form " 262
- provisions as to the subsequent proceedings, 267
 - delays for producing evidence, 268
 - special provisions for extending, 268
- delivery of articles seized, 270
- costs of extradition, 273

TREATY-MAKING POWER,

- prerogative of the Sovereign, not interfered with by Parliament, 15

TRIAL,

- limited to extradition offence, 60, 172, 257
 - United States doctrine, 15, 62
 - meaning of "provision by law or arrangement," 61
 - what is an opportunity of returning, 172, 258
- for other offences, to be completed before surrender, 63

Trinidad,

- extradition arrangement with French Guiana, 187

Tunis,

- arrangement with France as to extradition with, 189

ULTERIOR OBJECT,

- in requisition, how far it may be proved, 49, 58
- how far suggestion of bad faith in foreign Government may be proved, 59
- proof of in non-political cases, 173
- where it amounts to abuse of procedure of the Court, 173

UNILATERAL ARRANGEMENTS,

can be enforced under the Act, 34
with oriental country, how to be interpreted, 74

United States,

Act of 1843 giving effect to convention with, 29, 31,
supplementary conventions with, 35
law of as to limitation of trial to extradition offence, 61
effect of repeal clause of Act on treaty, 174
art. X of Ashburton Treaty still in force, 174
effect of Act on, 175

UTTERING,

extraditable offence, 132

WAR,

no extradition to enemy State, 79

WARRANT,

of safe conduct,

to police magistrate after arrest on summary warrant, 89
issue of is ministerial, 89

of detention,

refusal to issue no bar to fresh application, 77
may indicate broadly nature of crime, 92
is directed to officer not to prisoner, 93

summary warrant,

procedure for obtaining, 84
may be cancelled by Secretary of State, 82
of Bow Street magistrate may be executed in any part of United
Kingdom, 167
cannot be applied for if requisition cannot be made, 179
treaties in which procedure omitted, 266
effect of omission, 266
meaning of "made executory" in foreign procedure, 263

WARRANT, FOREIGN,

to be produced at hearing, 105
not necessary for arrest, 195
need not be of the same nature as English warrant, 106
proceedings do not give it currency in England, 106
need not set out crime in schedule, 107

WILD BIRDS PROTECTION ACT,

offences under, not extraditable, 234

WITNESS,

for foreign criminal trials, attendance compellable, 169
may refuse to criminate himself, 170

