

it, will, I think, give all the information desired by the Government of New Zealand on the subject of the extradition of fugitive criminals.

I also beg to enclose copies of "*pro forma*" correspondence when application is made for the extradition of a fugitive from justice.

The Right Hon. the Earl of Kimberley.

I have, &c.,
DUFFERIN.

Sub-Enclosure to Enclosure 3 in No. 16.

Department of Justice, Ottawa, 3rd December, 1872.

UPON the Despatch from the Secretary of State for the Colonies of the 29th August, 1872, the undersigned has the honor to report as follows:—

That Despatch transmits one from the Governor of New Zealand, asking for information respecting Treaty engagements with the United States with regard to the extradition of criminals. It also encloses a copy of a letter from the Foreign Office, and a Memorandum prepared on the subject in that Department.

The Despatch of the Colonial Secretary requests that the Governor-General will furnish a statement showing the course adopted in the case of a demand for the surrender of a criminal escaping from the Dominion into the United States.

The Imperial Act for giving effect to the Treaty with the United States (6 and 7 Vict. c. 76) was not in force in Canada. Under a provision contained in it, it was suspended in Canada by Order of the Queen in Council, in consequence of the passage by the late Province of Canada of an Act for carrying the Treaty into effect in Canada, which was re-enacted in 1866, after the confederation of the Provinces.

Whilst, therefore, the Imperial Act 6 and 7 Vict. cap. 76 has been repealed by "The Imperial Extradition Act, 1870," Canada has been in no way affected thereby, inasmuch as by section 27 of the last-mentioned Act the Canadian law in force is preserved.

The Memorandum of the Foreign Office, enclosed in the Despatch, states that the American Proclamation giving effect to the Extradition Article of Treaty of 1842 does no more than simply order that it shall be observed and fulfilled with good faith by the United States. But it is to be observed that the Congress of the United States has passed an Act, which is still in force, providing for the mode in which the Extradition Treaty should be worked.

Copies of the Acts of Canada and the Congress of the United States, as the same are respectively now in force, are herewith transmitted.

No difficulty has been found to exist in the case of fugitive criminals into Canada from the United States, or *vice versa*, in working the treaty under the statutes mentioned.

Upon the inquiry more particularly made in the Despatch from New Zealand, the undersigned would remark that under "The British North American Act, 1867," extradition is one of the subjects which rest with the Government of Canada, and that, therefore, all applications for extradition of fugitive criminals from any part of the Dominion must be made through the Governor-General of Canada.

The subject is usually initiated by a communication from the Attorney-General of a Province to the Attorney-General of Canada, by telegram, briefly stating the facts when the case is urgent, or at greater length showing the *prima facie* case for the application. Upon this application and the advice of the Attorney-General of Canada, the Governor-General communicates with Her Majesty's Minister at Washington, requesting that application be made to the Government of the United States for the extradition of A.B., charged with a specified offence, and requesting that a warrant may issue by the President of the United States for the delivery of the said A.B. to C.D. of &c., or to any other person specially authorized to receive him.

It rests with the parties interested in the prosecution of the criminal to proceed to the United States with the necessary evidence, and to go before a Commissioner, who takes the evidence, and submits to the Government of the United States.

If that Government is advised that the proceedings are correct, and show a case of extradition, the warrant of the President issues accordingly, and the officer from Canada being charged with a writ of *recipias*, attends and receives the criminal into his custody.

A precisely similar course is adopted in the case of an application for extradition by the Government of the United States. The Secretary of State at Washington addresses a written communication to Her Majesty's Minister there, asking for the extradition of a fugitive criminal, as above stated. This request is communicated by the British Minister to the Governor-General of Canada. The parties interested in the prosecution of the criminal come to Canada with the necessary evidence, and take such proceedings as are directed by the Extradition Act of Canada of 1868, before referred to. The papers being certified by the committing Judge or Commissioner, are transmitted to the Governor-General of Canada, and upon the advice of His Excellency's Attorney-General a warrant may issue for the delivery of the fugitive to the person named in the Despatch of Her Majesty's Minister at Washington to the Governor-General. It is of course competent to the criminal to move a writ of *habeas corpus*, and for a Court to discharge from custody.

It will thus be seen, that, with the exception of the demand for extradition being made, as the case may be, by or to the Governor-General of Canada, through Her Majesty's Minister at Washington, and the issue of a writ of *recipias*, or of a warrant of delivery of the fugitive, the