

inasmuch as by an Order of the Queen in Council, of the 19th June, 1868, its operation in Canada was suspended, in consequence of the passage by Canada of the Act 31 Vict. c. 94, which provided for the carrying into effect of the Treaty in Canada.

It would appear, therefore, that the Canadian Act above referred to is not in any way interfered with as regards extradition with the United States, but that proceedings will be continued under the law, as if it were part of the Imperial Extradition Act of 1870.

But the undersigned anticipates that some difficulty may arise in the practical working in Canada of "The Imperial Extradition Act, 1870," and of Treaties with Germany and Belgium which have since been made.

The course of proceeding which is to be adopted in the United Kingdom for the apprehension of a fugitive criminal is laid down by section 8 and the following sections; while section 17, subsection 2, declares the mode in which the machinery is to be put in operation in British Possessions. That subsection declares that all powers vested in, or acts authorized or required to be done under the 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 a British Possession alone (the interpretation clauses of the Act defining that to be the Governor-General of Canada).

Referring, however, to the mode of proceeding in the United Kingdom, it appears that the surrender and apprehension may be effected in either of the two modes:—

First, by a Police Magistrate on the receipt of the order from the Secretary of State, and on proper evidence; and

Second, by a Police Magistrate or any Justice of the Peace of the United Kingdom, on proper complaint and evidence, &c.; but the power of the Justice of the Peace is limited to the issue of a warrant ordering the person to be brought before a Police Magistrate.

It will be seen, therefore, that the officer who is, in all cases, in the United Kingdom, to investigate and adjudicate upon the case, is the Police Magistrate, and that in a British Possession those duties may be performed by the Governor-General alone.

In Canada, the Police Magistrates are officers appointed by the local Governments of the General Provinces, and are not amenable to the authority of the Government of Canada. They are amongst the officers originally named in the Act of Canada of 1868, 31 Vict. c. 94, as empowered to issue warrants for the apprehension of the fugitive, and investigation of the charge, with power to commit the person apprehended to the proper gaol, until surrendered or discharged according to law.

It was, however, found inadvisable in practice that these officers should be charged with the performance of those duties; and accordingly, in 1870, by 33 Vict. c. 25, so much of the Act as permitted any Police Magistrate and Stipendiary Magistrate in Canada, or any Judge of the Sessions of the Peace in the Province of Quebec, or any Inspector or Superintendent of Police empowered to act as a Justice of the Peace in the Province of Quebec, to act or adjudicate in the matter, was repealed.

The authority therefore to act under 31 Vict. c. 94 is now vested in any Judge of Her Majesty's Superior Courts of Canada, or any Judge of a County Court of Canada, or any Commissioner appointed for the purpose by the Governor under the Great Seal; and practically it is found most expedient to appoint a Commissioner for the purposes of the Act, which is the course adopted in this respect by the United States.

The undersigned, therefore, has the honor to recommend that legislation should be had on the subject by Canada, and that similar provisions to those contained in the Act of Canada for carrying the Treaty into effect as regards the United States of America, varying them, however, to meet the provisions of the Imperial Extradition Act of 1870, should be brought before the Legislature, and having reference to any Treaties of Extradition which have been or hereafter may be made between Her Majesty and any Foreign State, and by Order in Council of Her Majesty extended to Canada.

Such an Act would of course be reserved for the signification of Her Majesty's pleasure; but if it received the Royal assent, it would also be requisite, under section 18 of the Imperial Act of 1870, that an Order of the Queen in Council should direct that such law should have effect in Canada, as if it were part of the said Imperial Act.

H. BERNARD, D.M.J.

I concur.—JOHN MACDONALD.

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#### No. 24.

COPY of a DESPATCH from the Right Hon. the Earl of KIMBERLEY to the OFFICER ADMINISTERING the GOVERNMENT of NEW ZEALAND.

(No. 13.)

SIR,—

Downing Street, 14th February, 1873.

I have the honor to inform you that Her Majesty will not be advised to exercise Her power of disallowance with respect to the following Acts of the