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CORRESPONDENCE

RESPECTING THE

EXTRADITION TREATY

WITH

FRANCE.



8749

Presented to both Houses of Parliament by Command of Her Majesty.
July 1866.

LONDON:

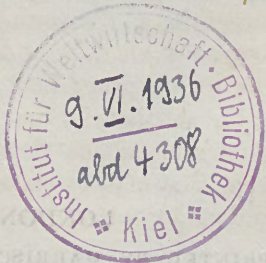
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Correspondence respecting the Extradition Treaty with France.

No. 1.

The Prince de la Tour d'Auvergne to the Earl of Clarendon.—(Received December 5.)

M. le Comte,

Londres, le 4 Décembre, 1865.

J'AI eu l'honneur d'adresser au Comte Russell, au mois de Novembre 1864 et de Mars 1865, diverses communications au sujet de l'insuccès des demandes d'extradition que nous avons été dans le cas d'adresser au Gouvernement de la Grande Bretagne, et ma dernière dépêche du 13 Mars lui faisait pressentir que, dans le cas où les améliorations que nous étions désireux d'apporter au régime créé par la Convention de 1843 seraient repoussées, nous pourrions nous trouver dans l'obligation de dénoncer le Traité.

Votre Excellence connaît les difficultés contre les quelles viennent toujours échouer nos demandes d'extradition. Je prendrai la liberté de lui rappeler, ici, seulement les deux principales.

En premier lieu, le Gouvernement de la Reine ne se croit pas autorisé à nous livrer les condamnés, vu que la Convention ne mentionne que les accusés. Afin de faire disparaître les conséquences peu logiques d'un système qui eût consacré le principe d'extradition pour les personnes simplement présumées coupables, et qui l'eût repoussé pour les personnes légalement convaincues par une sentence judiciaire, nous avons proposé de comprendre expressément les condamnés dans une disposition additionnelle au Traité de 1843. Mais notre offre a été déclinée par le Gouvernement de la Reine qui a craint de ne pouvoir faire accepter cette disposition par le Parlement.

En second lieu, la Convention d'Extradition, telle que l'interprètent les Avocats de la Couronne, paraîtrait se résumer dans l'obligation d'aller en quelque sorte faire juger le procès en Angleterre, ainsi que nous avons pu le constater entre autres par le refus récemment opposé à notre demande d'extradition du nommé Teissier, l'un des pirates du "Fæderis Arca," qu'on supposait devoir aborder à Calcutta. L'Avocat-Général du Gouvernement de l'Inde et les Avocats de la Couronne ont déclaré que pour autoriser l'arrestation et le renvoi en France du fugitif, il aurait fallu joindre au mandat d'arrêt des copies des dépositions déjà reçues dans l'information et dont l'authenticité aurait été attestée sous serment par la personne qui les aurait produites de telle sorte que le Magistrat de Police de Calcutta pût constater si le fugitif était, *primâ facie*, coupable du crime pour lequel son extradition était réclamée.

Ces exigences nous paraissent constituer un obstacle permanent au succès des demandes d'extradition, en même temps qu'elles diffèrent de la pratique généralement suivie sur la matière par les autres Puissances de l'Europe. Le Gouvernement de l'Empereur en effet n'envisage point l'extradition comme une mesure destinée à couvrir les intérêts spéciaux de tel ou tel Etat, mais comme l'application la plus large du principe de la répression pénale au point de vue de l'ordre social, qui réunit dans un but commun de protection et de garantie mutuelle tous les peuples civilisés. Il la considère comme ayant pour but de restituer le coupable à son juge naturel en le privant du bénéfice du droit d'asile qu'il devait autrefois à l'hostilité des divers peuples entre eux et à leur indifférence pour les crimes commis en dehors de leur territoire. Dans cet ordre d'idées l'extradition n'est plus qu'une loi de procédure et de compétence internationales et les Etats Contractants en pareille matière n'ont à se demander réciproquement que les preuves indispensables pour vérifier si les poursuites sont sérieusement dirigées par le juge compétent et motivées par des crimes communs. Nous ne verrions pas bien l'utilité réelle d'un Traité qui s'écarterait de cette règle, et nous n'y trouverions point le caractère

de réciprocité essentiel dans les rapports internationaux. En ce qui concerne le Traité du 13 Février, 1843, une expérience de vingt-deux années nous en a démontré l'inefficacité en faisant ressortir l'anomalie d'une situation où le contrat n'est exécuté que par d'une des parties et qui ne saurait se prolonger sans inconvénients pour la France.

Dans cet état de choses, le Gouvernement de l'Empereur a dû se préoccuper sérieusement du soin de dégager sa responsabilité en présence des facilités offertes aux malfaiteurs pour trouver un refuge à quelques heures de nos côtes et d'une impunité dont la conscience publique est jusqu'à un certain point fondée à lui demander compte tant que le Traité subsiste.

En conséquence, j'ai reçu l'ordre d'annoncer officiellement à votre Excellence qu'usant de la faculté inscrite à l'Article IV de la Convention du 13 Février, 1843, le Gouvernement de l'Empereur a cru devoir prendre la résolution de dénoncer le Traité qui cessera de produire ses effets dans six mois à dater de la présente déclaration, que j'ai été chargé de porter à la connaissance de votre Excellence.

Veillez, &c.

(Signé) PCE. DE LA TOUR D'AUVERGNE.

(Translation.)

M. le Comte,

London, December 4, 1866.

I HAD the honour to address to Lord Russell in the months of November 1864 and March 1865, various communications on the subject of the failure of the demands for extradition which we have had occasion to address to the Government of Great Britain, and my last despatch of March 13 led him to foresee that, in the event of the improvements which we desired to introduce into the procedure created by the Convention of 1843, being rejected, we might find ourselves obliged to denounce the Treaty.

Your Excellency is aware of the difficulties owing to which our demands for extradition alway miscarry. I shall take the liberty of recapitulating here, only the two principal ones.

In the first place, the Government of the Queen does not consider itself authorized to deliver up persons condemned, since the Convention only mentions those accused. In order to obviate the consequences, hardly logical, of a system which had ratified the principle of extradition for persons simply presumed to be guilty, and which had rejected it as regards persons legally condemned by a judicial sentence, we proposed to include expressly those condemned by a stipulation supplementary to the Treaty of 1843. But our offer was declined by the Queen's Government, which feared it would be unable to induce Parliament to accept this arrangement.

In the second place, the Convention of Extradition, according to the interpretation of the Law Officers of the Crown, would appear to resolve itself into the obligation in some degree to form an opinion on the case in England, as amongst other cases, we have been able to show by the refusal lately made to our demand for the extradition of Teissier, one of the pirates of the "Fæderis Arca," who was supposed to have landed at Calcutta. The Advocate-General of the Government of India and the Law Officers of the Crown declared that to authorise the arrest and return to France of the fugitive, it would have been necessary to add to the warrant of arrest copies of the depositions already taken in the information, and the authenticity of which should have been attested on oath by the person producing them, so that the Police Magistrate of Calcutta could determine whether the fugitive was *primâ facie* guilty of the crime on account of which extradition was demanded.

These requirements appear to us to constitute a permanent obstacle to the success of the demands of extradition, and at the same time to differ from the practice generally followed in the matter by the other Powers of Europe. The Government of the Emperor, in point of fact, does not regard extradition as a measure intended to provide for the special interests of a particular State, but as the largest possible application of the principle of the repression of crime from the point of view of social order which unites together all civilized peoples in the common aim of protection and mutual guarantee. They consider it as aiming to restore the guilty person to his natural judge in depriving him of the right of asylum which originally he owed to the hostility of the different nations amongst themselves, and to their indifference to crimes committed outside their territory. According to this view extradition is only a law of international procedure and competency, and the Contracting States, in like case, have only reciprocally to ask for the necessary proofs to show that the proceedings are really directed by a competent judge and occasioned by common crimes. We have not clearly seen the actual utility of

a Treaty which digresses from this rule, and we have not found in it the character of reciprocity essential in international engagements. As regards the Treaty of February 13, 1843, the experience of twenty-two years has demonstrated its inefficiency in showing the anomaly of a situation when the contract is only executed by one of the parties, and which cannot be prolonged without inconvenient results to France.

In this state of things the Emperor's Government thought right to take into serious consideration the means of freeing themselves from their responsibility in the face of facilities offered to criminals of finding a refuge at a few hours' distance from our coasts, and an impunity which public conscience is up to a certain point bound to call in question so long as the Treaty is in force.

In consequence, I have received directions officially to announce to your Excellency that in virtue of the power given in Article IV of the Convention of February 13, 1843, the Government of the Emperor has thought proper to resolve to denounce the Treaty, which will cease to have effect in six months' date from the present declaration, which I have been charged to bring to your Excellency's knowledge.

Accept, &c.

(Signed) PCE. DE LA TOUR D'AUVERGNE.

No. 2.

The Earl of Clarendon to Earl Cowley.

My Lord,

Foreign Office, January 10, 1866.

I RECEIVED a short time ago from the French Ambassador a letter, of which I inclose a copy, denouncing the Extradition Treaty between the two countries of the 13th February, 1843, which Treaty will consequently cease to have effect from and after the 4th June next.

The French Ambassador, as you will see, alludes to the refusal of Her Majesty's Government to extend the provisions of the Treaty of 1843, so as to include persons convicted, as well as persons accused; but the grounds on which the determination to denounce the Treaty has been taken are stated to be the impossibility of obtaining the extradition of French criminals, in consequence of the nature of the requirements in this country for that purpose, whereby the Treaty fails to secure to France the benefits which it was anticipated would result from it.

Her Majesty's Government have received this communication with much regret, and I informed the French Ambassador that I had delayed making any reply to it in writing in the hope that some means might be devised for meeting the wishes of the French Government without setting aside the principles of British law.

Her Majesty's Government readily admit that, as far as the extradition of French criminals—and I may add English criminals also—is concerned, the Treaty has fallen short of what might have been anticipated would have been the case. Still it has, perhaps, in another way, not been unattended with considerable benefit to France, as well as to England, for it cannot be doubted that English and French criminals have been greatly deterred from seeking refuge in the respective countries by the conviction that under the Extradition Treaty there was no sure asylum for them in either.

Her Majesty's Government cannot but think that England and France derive a real and substantial advantage from a state of things which discourages the resort of foreign malefactors to their territories, and drives them to seek shelter in other countries in Europe; and that such is the effect of the Treaty may be inferred from inquiries sometimes made at the Foreign Office with the view of ascertaining with what countries England has Treaties of Extradition. Such an inquiry was made only a few days ago, and not improbably, from the place from which it emanated, on behalf of a fugitive from justice.

The probable and immediate consequence of the cessation of the Extradition Treaty between England and France will be to inundate the two countries with criminals, fugitives from justice, who will find it much easier to cross the Straits of Dover than to repair, in the case of English criminals, to the United States, where, though it is difficult to trace a fugitive, there is an Extradition Treaty still in force, or to Belgium, Holland, or Germany, to which English criminals constantly resort, as affording them shelter from pursuit, which they cannot rely upon finding in France.

It cannot be questioned that the facility of escaping from justice, which the abrogation of the Extradition Treaty with France will afford, is calculated to encourage crime in France as well as in England, and therefore likely to be attended with very mischievous consequences as regards both countries.

Under these circumstances it would seem to be for the interest of both countries to consider whether some means could not be devised for removing the difficulty which has led to this measure on the part of the French Government, and the existence of which Her Majesty's Government fully admit.

The difficulty as regards France, originates, it is believed, either in the law or practice of that country, which precludes the production of such evidence in support of a warrant for arrest as is required by the British law.

According to the practice of this country it is sufficient that the accuser should make oath before a magistrate that such a person has committed a crime, to enable the magistrate to issue a warrant for the apprehension of the accused.

But the next step is more conclusive. The accused, in virtue of the warrant, is brought before the magistrate, and his accuser must appear with his witnesses in open Court, and there on oath, and in the hearing of the prisoner, establish to the satisfaction of the magistrate that there is sufficient ground for assuming, first, that a crime has been committed, and secondly, that the prisoner is the person who has committed it. This being done, the prisoner is sent to gaol to await his conviction or deliverance before a superior Court.

But this process, however sacred it is held in this country for the protection of the accused, seemed to require some modification under Treaties of Extradition. If the presence before a magistrate of the accuser and his witnesses, and the delivery of their evidence orally in the presence of the prisoner had been insisted upon as indispensable, it might have been found impossible to give effect to such Treaties; for foreign accusers and foreign witnesses could not always be expected or required to repair to this country and to make good their charges in the ordinary way prescribed by the law of the land.

Parliament therefore consented in this particular to depart from the long cherished usages of this country, and sanctioned, by an Act passed on the 22nd of August, 1843, "for giving effect to a Convention between Her Majesty and the King of the French for the apprehension of certain offenders," a provision in the following terms, viz.: "That in every such case copies of depositions upon which the original warrant was granted, certified under the hand of the person or persons issuing such warrant, and attested upon the oath of the party producing them to be true copies of the original depositions, may be received in evidence of the criminality of the person apprehended."

The effect of this enactment was to admit of depositions, if ample and conclusive, as a substitute for parole evidence, or at all events to admit of depositions being produced in support or corroboration of parole evidence.

This, looking to the feelings of the British Parliament and public in regard to matters affecting the liberty of all classes of the community, not excepting even persons suspected of crimes, was a concession of no small importance, and could only have been made from a sense of imperious necessity.

In the case of the French Extradition Treaty, however, a difficulty has arisen, whether founded on French law or merely on French practice I am unable to say, which entirely precludes the production of depositions, whether alone or coupled with parole evidence, in the case of French criminals fugitives from justice, whose extradition may have been demanded under the Treaty of February 13, 1843.

The French Government are understood to consider that the production of a *mandat d'arrêt* should be sufficient, without any further evidence of criminality to secure the extradition of a criminal; and they contend, moreover, that it would not be practicable to exhibit to an English magistrate such *prima facie* evidence in support of the charge on which the *mandat d'arrêt* is issued as the English law requires in order to admit of extradition.

Her Majesty's Government are not exactly aware of the circumstances under which a *mandat d'arrêt* is issued, or, indeed, what the term itself imports. Is it a mere warrant in the first instance, such as I have described to be issued by an English magistrate, on a simple deposition that a given person has committed a crime, and the effect of which is merely to authorize the apprehension of an accused person with a view to ascertaining, by a formal, though still a preliminary, investigation by a magistrate, the truth or falsehood of the accusation, and which terminates either in the committal of the accused for trial or his discharge, but which does not involve the punishment of the accused, or his absolution from further proceeding, should additional evidence at any future time be forthcoming? Or is it issued only after a formal hearing of witnesses, whose evidence is taken down in writing, and furnishes the materials for what, in England, would be called the Bill of Indictment (with which it is believed the French "*Acte d'Accusation*" corresponds), on which the prisoner would ultimately be tried?

In the former case it would surely seem to afford a very insufficient security that the charge is really well founded, and does not rest on mere suspicion, or on private animosity or pique. In the latter case, as the evidence would have already been reduced to writing, it is not easy to understand what insuperable difficulty exists which should prevent the documents being exhibited to an English Police Magistrate. The very terms of the 1st Article of the Treaty of 1843 would seem to provide for such a course. The Article says that "this," namely, the delivery up to justice of persons accused of certain crimes, "shall be done only when 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, further on, the Article says, that "on the part of the British Government the surrender shall be made only on the report of a Judge or Magistrate duly authorized to take cognizance of the acts charged against the fugitive in the warrant of arrest, or other equivalent judicial document issued by a Judge or competent Magistrate in France, and likewise clearly setting forth the said acts." The words of the French version of the Treaty are even stronger in this respect than those of the English version:—

"Pourvu que cela n'ait lieu que dans le cas où l'existence du crime sera constatée de telle manière que les lois du pays où le fugitif ou individu ainsi accusé sera rencontré justifieraient sa détention et sa mise en jugement si le crime y avait été commis;" and then, further on, "elle" (meaning the extradition) "ne sera effectuée de la part du Gouvernement Britannique que sur le rapport d'un Juge ou Magistrat commis à l'effet d'entendre le fugitif sur les faits mis à sa charge par le mandat d'arrêt ou autre acte judiciaire équivalent, émané d'un Juge ou Magistrat compétent en France, et énonçant également d'une manière précise les dits faits."

It is clear from the whole tenour of these clauses that in order to the extradition of a French criminal under the Treaty, there must be first a warrant, setting forth on the face of it the acts of which the party is accused, and, next, sufficient evidence not only to establish the commission of the crime, but also to prove that the criminal act charged is a crime according to the law of England, and is specified in the Treaty.

Now evidence can only be parole or documentary. The British Legislature, as I have said, consented to waive the former in the case of the French Treaty, though in doing so it admitted a practice at variance with the principles of British law and usage, and agreed in lieu of it to accept the latter, either if complete and conclusive, or in support of parole evidence.

And here I may remark that, considering the contiguity between France and England, there would seem to be no very insurmountable difficulty in providing for the attendance in either country of witnesses to support a charge against a prisoner, whose evidence, either alone or supplemented by depositions, might satisfy the requirements of the Treaty, which are as regards both countries identical, however different the practice of either in regard to them.

But the French Government demur to comply with the requirements of the Treaty in either respect, and thus it fails to obtain its fugitive criminals.

If the present state of the French law precludes the French Government from complying with the terms of the Treaty, is it too much to suggest that as the British Legislature in order to carry into effect the provisions of the Treaty, consented to modify the British law, the French Government should adopt the same course, and by doing so contribute, as the British Legislature has long since done, to render the Treaty operative?

Your Excellency will press this point strongly on the French Government; but if, for some reason or other, that Government should consider it impossible to adopt this course, your Excellency will then request the French Government clearly to point out what they understand by the terms of the Treaty; what they consider is required of them under those terms in support of their demands for the surrender of French criminals; and whether they are prepared to adopt any course whereby the difficulties of the present state of things obviated.

Her Majesty's Government, your Excellency will assure M. Drouyn de Lhuys, will be prepared to give their best consideration to any proposal which that of France may make on the subject. But the French Government need not be reminded that the British Government can make no alterations in the system now sanctioned by the Legislature without having recourse to Parliament for its sanction, and recent experience has shown that there would be great difficulty in obtaining from Parliament any further modifications in regard to the requirements of the law and usage of this country in dealing with persons accused of crime.

The evil, however, to both countries of the abrogation of the safeguards, now afforded

by the Extradition Treaty, is too evident not to make it incumbent on both to give their best attention to the possibility of maintaining it for their mutual advantage, and it is under this conviction that Her Majesty's Government are prepared to deal with the communication made to them by the French Ambassador in his note of the 4th instant, by which, if no expedient can be devised for maintaining the Treaty, a sure asylum for criminals fugitive from justice will henceforth be secured to such criminals in the respective countries.

It may not be irrelevant to the question between England and France to observe that the Extradition Treaty between France and the United States, as well as the law of the United States for giving effect to it, is in its most essential clauses identical with those of the English and French Treaty, and English Act of Parliament for giving effect to it. I allude specifically to the proviso in Article I of both Treaties, which is couched in the French version in the following terms already quoted, viz.:—"Pourvu que cela n'ait lieu que dans le cas où l'existence du crime sera constatée de telle manière que les lois du pays où le fugitif ou individu ainsi accusé sera rencontré, justifieraient sa détention et sa mise en jugement si le crime y avait été commis."

There is no allusion here to convicts as coming within the scope of the Article, the persons so coming being previously stated to be those "accusés des crimes," but in both Treaties it is stated that "l'existence du crime sera constatée," &c.; and to show what construction was put on this provision by the Legislature of the United States, the Act of Congress providing for the apprehension of a fugitive criminal under the Treaty, and for his being brought before the proper magistrate, says that the object of his being so brought is "to the end that the evidence of criminality may be heard and considered, and if on such hearing the evidence be deemed sufficient," &c.

The same Act of Congress contains a further provision for the admission of depositions in precisely the same terms as those used in the British Act giving effect to the Treaty between Great Britain and France.

Your Excellency will not fail to call M. Drouyn de Lhuys' attention to this identity of construction placed by Great Britain and the United States on their respective Extradition Treaties with France, while you place in his Excellency's hands a copy of this despatch, and invite the early attention of the French Government to the subject.

I am, &c.

(Signed) CLARENDON.

No. 3.

The Earl of Clarendon to Earl Cowley.

My Lord,

Foreign Office, January 10, 1866.

I HAVE thought it most convenient to confine the remarks in my other despatch of this day on the subject of the Extradition Treaty, which has been denounced by the French Government, strictly to the questions arising out of its anticipated abolition.

It is desirable, however, that I should inform your Excellency in a separate despatch as to the view taken by Her Majesty's Government of the desire of the French Government that the case of convicts, as well as of persons only accused of crime, should be brought within the provisions of an Extradition Treaty.

The cases of the two classes are essentially different, and the principle applicable to them cannot therefore be the same.

The principle on which an Extradition Treaty is provided is the importance to society of persons charged with committing crimes being brought to answer the charge before a proper tribunal, so that no encouragement may be afforded to crime by a prospect of impunity.

Such a prospect would, however, exist in the case of a person who had committed a crime in one country, and continuing to evade the pursuit of justice in that country, had made his escape into another, unless the existence of an Extradition Treaty between the two countries admitted of his being apprehended in the country to which he had fled, and delivered over to be tried in the country in which he had committed the crime.

The object of such Treaty is to secure that a criminal shall be brought to the bar of justice, and, if found guilty, punished. This could not be done in the country to which a criminal might have fled, but could only be done in the country from which he had fled, but in which the means of doing so must depend on the existence of an Extradition Treaty.

The case, however, of convicts is different; they have been apprehended, tried,

convicted, and condemned in the country where they have committed crime; and it is for that country having once got the convict within its jurisdiction and having possession of his person, to take care that he does not escape. But whether he escapes or not, the ends of justice have so far been secured, that the criminal has been apprehended and made to answer for his crime, and has not been able to avert such consequences by seeking refuge in another country.

But if it is meant that persons condemned in their absence, and as it is termed *par contumace*, should be claimable under an Extradition Treaty, a very serious question must necessarily arise as to the real import of such a condemnation. To place these persons in the same category with other persons tried and convicted would be to assume that the very fact alone of a person charged with the commission of a crime not appearing to take his trial, must be accepted as an acknowledgment of guilt, and as a warrant for sentence. But it is obvious that many reasons may exist short of an actual admission of guilt to deter a person from appearing to take his trial; and it seems to be a great stretch of judicial power to condemn a person unheard, in necessary ignorance whether the charge against him cannot be rebutted by evidence which might be adduced by him or explained away.

I need scarcely tell your Excellency that such a practice is not consistent with the laws, usage, or public feeling of this country in regard to British subjects; and it would be impossible for the British Government to deliver up, under an Extradition Treaty, persons so condemned.

Your Excellency will therefore be very careful not to allow the French Government to suppose that Her Majesty's Government would be disposed to enter into an engagement to give up to a foreign Power persons convicted in the Courts of that Power, whether the conviction ensued after trial, or in the absence of the accused party.

I am, &c.

(Signed) CLARENDON.

No. 4.

The Earl of Clarendon to Earl Cowley.

My Lord,

Foreign Office, January 20, 1866.

SINCE the date of my despatch of the 10th instant, I have received from the Home Office the result of an inquiry which, at my request, was made by Secretary Sir George Grey of the chief magistrate at Bow Street, with the view of ascertaining by what course of procedure effect could be given in this country to the provisions of the Extradition Treaty with France.

It appears that at Bow Street, in support of a demand for extradition, there are required:—

1. The production of a warrant of arrest issued by a competent magistrate in France, setting forth the crime charged.
2. A certified copy of the depositions taken before the said magistrate, and which must contain proof of the criminality of the accused.
3. A witness who can identify the accused.

These requirements, it appears, were explained in July last by the chief magistrate of Bow Street to M. Bonard, the Counsel to the French Embassy, accompanied by the expression of the desire of the chief magistrate to facilitate the execution of the Treaty as much as possible, and to afford M. Bonard any assistance in his power.

In the case which led to the conversation to which I have thus alluded, M. Bonard subsequently informed the chief magistrate that the prosecutor declined to send over a witness to identify the person accused, and the matter therefore dropped, for it is obvious that a constable could not make an arrest unless there was some one to identify and point out the person to be arrested.

There is reason to suppose that the chief cause of the difficulties which have prevented the extradition of French criminals, consists in the imperfect acquaintance which the French magistrates have with the provisions of the English Acts of Parliament for giving effect to the Extradition Treaty with France, and in their consequent ignorance of the proofs which English magistrates are bound to require before they can sign the warrant of surrender, the form of which is given in the Schedule of the Act of the 8th and 9th Victoria, cap. 120.

To obviate difficulties of this nature, it would probably be sufficient if French magis-

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C

trates were apprized by authority that in issuing warrants of arrest for purposes of extradition, they should take care :—

1st. That the warrant of arrest shall clearly and fully set forth the crime charged, and that such warrant shall be signed by the magistrate issuing it, in the presence of the person who will be the bearer of it to England, so that such person may be able to prove that it was issued by a French magistrate.

2ndly. That the depositions shall contain sufficient proof of the criminality of the accused, so as to dispense with the necessity of producing any oral evidence, and shall as far as possible not refer to hearsay evidence, which is inadmissible in England. The magistrate should certify in writing that the copy of the depositions sent to this country is a correct copy of the original depositions; and the person who brings the copy to England should be required to compare the copy with the original, so that he may be able to prove that it is an examined copy.

3rdly. That some person shall be sent to England by the prosecutor who can identify the accused.

I am informed that the course which I have thus suggested for adoption by French magistrates is in accordance with that pursued in this country in issuing warrants which are to be used in France for extradition purposes.

It is probable that in almost every case, one person if properly instructed might be able to prove the three things required to be proved, namely, the due execution of the warrant of arrest, the correctness of the depositions, and the identity of the accused person; and it would then only remain for the English magistrate to see that the depositions contained sufficient proof of the criminality of the accused, in which case the matter would be complete, and the party would be surrendered.

Her Majesty's Government believe that the difficulties which have hitherto been experienced in carrying into effect the provisions of the Extradition Treaty may easily be removed, but it probably would very much facilitate any proceedings if the conduct of them in this country, on behalf of the French Government, were entrusted to M. Bonard, who is understood to be very well versed in English as well as French procedure.

Your Excellency will communicate with M. Drouyn de Lhuys to the effect of this despatch, of which indeed you may furnish him with a copy if you should think it desirable to do so.

I am, &c.
(Signed) CLARENDON.

No. 5.

Earl Cowley to the Earl of Clarendon.—(Received January 23.)

My Lord,

Paris, January 22, 1866.

DURING a conversation which I had some days ago with M. Drouyn de Lhuys, I remarked to his Excellency that the Extradition Treaty signed in 1843 between France and the United States was similar in spirit, and identical in many of its clauses, to that concluded between Great Britain and France in the same year, which the Imperial Government had just denounced, and I asked his Excellency whether he could give me any information respecting the manner in which the former had worked, and whether it had produced more favourable results.

M. Drouyn de Lhuys could not reply to my inquiries at once, but he has since furnished me with a Memorandum upon the subject, of which your Lordship will find a copy inclosed.

M. Drouyn de Lhuys asserts in the Memorandum that a British subject, accused of any crime mentioned in the Treaty, is given up on the exhibition to the French authorities of a simple warrant of arrest. But if this is so, it must be because the French authorities do not examine the documentary evidence which invariably accompanies the warrant. On the other hand, one cannot help asking oneself how it happens that if a simple warrant is sufficient for the delivery of the accused, three weeks or a month should elapse after the warrant is in the hands of the French authorities, before a reply to the application for extradition is given.

I purpose on the first opportunity to call M. Drouyn de Lhuys' attention to this point.

I have, &c.
(Signed) COWLEY.

Inclosure in No. 5.

Memorandum.

LES relations de la France et des Etats Unis en matière d'extradition quand on les compare à celles qui existent entre la France et la Grande Bretagne, suggèrent d'abord au point de vue le plus général, cette observation toute naturelle que les inconvénients résultant de l'inexécution du Traité sont infiniment plus graves à raison des distances en ce que regarde l'Angleterre qu'en ce qui touche les Etats Unis.

D'autre part, les Etats Unis n'étant pas une Puissance Européenne, il suit de là qu'on est moins fondé à leur demander de mettre leur législation et leur pratique, en matière d'extradition, en harmonie avec celles des peuples Européens.

Quant au Traité lui-même, s'il est vrai que ses stipulations reposent sur le même principe que le Traité Anglo-Français, le texte n'est cependant point identique et l'on peut dire que, dans la forme au moins, la réciprocité y est mieux observée.

Ainsi le Traité Franco-Américain et le Traité Anglo-Français ont cela de commun qu'il est également dit dans les deux textes que les criminels ne seront livrés que dans le cas où l'existence du crime sera constatée de telle manière que les lois du pays, où le fugitif sera rencontré, justifieraient sa détention et sa mise en jugement, si le crime y avait été commis. Mais le Traité Franco-Américain se borne à poser le principe. Le Traité Anglo-Français va plus loin : il organise la procédure d'extradition, et il résulte de cette organisation que l'accusé Anglais est remis par la France à la Grande Bretagne sur la production d'un simple mandat d'arrêt, tandis que de la part de l'Angleterre l'extradition est subordonnée au rapport d'un Juge commis à l'effet d'entendre le fugitif sur les faits mis à sa charge.

Sous le rapport des faits susceptibles de motiver l'extradition le Traité Franco-Américain est aussi plus complet que la Convention Anglo-Française ; le second ne comprend que le meurtre, le faux et la banqueroute frauduleuse ; le premier s'applique en outre au viol, à l'incendie, aux soustractions commises par les dépositaires publics.

De plus, la France a obtenu à diverses époques des extensions au Traité primitif. Ainsi une Convention Additionnelle de 1845 a ajouté aux cas d'extradition la plupart des vols qualifiés, et une autre de 1858 a chargé encore la catégorie des faits susceptibles d'extradition, en même temps qu'elle a étendu la mesure aux complices comme aux auteurs principaux.

On peut donc dire que, si l'extradition avec les Etats Unis n'a pas amené tous les résultats qu'on pouvait désirer, cependant la question a marché, et la France n'a pas été sans obtenir des améliorations qui en font espérer d'autres : avec la Grande Bretagne, au contraire, le Traité de 1843 est aujourd'hui ce qu'il était à son début.

En fait d'ailleurs le Traité Franco-Américain a trouvé aux Etats Unis des facilités d'exécution plus grandes que le Traité Franco-Anglais n'en a rencontrées en Angleterre, où il est resté complètement stérile. Ainsi sur dix demandes d'extradition faites aux Etats Unis cinq ont obtenu un résultat favorable.

Enfin, l'Angleterre a concédé au Danemark ce qu'elle nous refuse, — appliquer l'extradition aux condamnés comme aux accusés. Par un Traité signé à Londres le 15 Avril, 1862, et promulgué à Copenhague le 28 Septembre de la même année, l'Angleterre s'est engagée à livrer au Danemark les condamnés à l'égal des accusés.

(Translation.)

THE relations of France and of the United States in the matter of extradition, when compared with those which exist between France and Great Britain, suggest in the first place, in the most general point of view, this very natural remark, that the inconveniences which arise from the non-execution of the Treaty are infinitely more serious on account of distances as respects England, than as respects the United States.

On the other hand, the United States not being an European Power, it follows that one is less justified in demanding of them to place their legislation and their practice in the matter of extradition in harmony with those of European nations.

As to the Treaty itself, although it is true that its stipulations are based on the same principle as the Anglo-French Treaty, nevertheless, the text is not identical, and it may be said that, in form at least, reciprocity is better observed in the former.

Thus the Franco-American Treaty and the Anglo-French Treaty have this in common, that it is equally said in the two texts that criminals shall only be surrendered in the case where the existence of the crime shall have been proved in such manner that the laws of the country where the fugitive is met would justify his detention and his

committal for trial, if the crime had been committed there. But the Franco-American Treaty merely lays down the principle. The Anglo-French Treaty goes further, it regulates the procedure of extradition, and the result of this regulation is, that an accused Englishman is delivered up by France to Great Britain on the production of a simple warrant, while, on the part of England, extradition is dependent on the report of a magistrate commissioned to hear the fugitive on the acts laid to his charge.

Under the head of acts which may give rise to extradition, the Franco-American Treaty is also more complete than the Anglo-French Convention; the latter only includes murder, forgery, and fraudulent bankruptcy; the former applies, in addition, to rape, arson, and embezzlement committed by trustees.

Further, France has obtained at different times extensions of the original Treaty. Thus an Additional Convention of 1845 has added to the cases for extradition the greater number of flagrant robberies, and another of 1858 has again changed the category of acts justifying extradition, and at the same time, has extended the measure to the accomplices as well as to the principals.

One may, therefore, say, that if extradition with the United States has not produced all the results that may have been desired, nevertheless the question has progressed, and France has been able to obtain improvements, which lead one to hope for others: with Great Britain, on the contrary, the Treaty of 1843 is at this moment what it was at its commencement.

Moreover, the Anglo-American Treaty, has found greater facilities of execution in the United States than the Anglo-French Treaty has met with in England, where it has remained completely barren of results. Thus, out of ten demands for extradition made to the United States, five have been attended with a favourable issue.

Finally, England has conceded to Denmark what she denies us, namely, the application of extradition to the convicted as well as to the accused. By a Treaty signed at London on the 15th April, 1862, and published at Copenhagen on the 28th September in the same year, England undertook to surrender to Denmark convicted prisoners in the like manner as accused persons.

No. 6.

Earl Cowley to the Earl of Clarendon.—(Received January 24.)

My Lord,

Paris, January 23, 1866.

ON the 20th instant I addressed to M. Drouyn de Lhuys a note embodying the substance of your Lordship's despatch of the 10th instant on the subject of the denunciation by the French Government of the Extradition Treaty of 1843. A copy is herewith inclosed.

Further, I have thought it advisable to communicate to M. Drouyn de Lhuys a copy of a Memorandum showing how the demands of extradition made by Her Majesty's Government since 1852 had been met by the Government of the Emperor. A copy of my note to M. Drouyn de Lhuys on this subject is likewise inclosed.

Lastly, having deemed it expedient to make some observations on the Memorandum furnished me by M. Drouyn de Lhuys, and inclosed in copy in my despatch of yesterday's date, on the operation of the Extradition Treaty between France and the United States, I have likewise consigned them to a Memorandum which I have sent to the French Minister. Your Lordship will find a copy of this Memorandum annexed.

M. Drouyn de Lhuys has promised me an early examination of all these papers, with a view of conferring with me as soon as possible upon the whole question.

I have, &c.

(Signed) COWLEY.

Inclosure 1 in No. 6.

Earl Cowley to M. Drouyn de Lhuys.

M. le Ministre,

Paris, June 20, 1866.

HER Majesty's Principal Secretary of State for Foreign Affairs has received from the French Ambassador in London a letter, dated 4th December last, denouncing the Extradition Treaty between the two countries of 13th February, 1843, which Treaty will consequently cease to have effect from and after 4th June next. The Prince de la Tour d'Auvergne alludes in this letter to the refusal of Her Majesty's Government to extend

the provisions of the Treaty of 1843, so as to include persons convicted as well as persons accused; but the grounds on which the determination to denounce the Treaty has been taken, are stated to be the impossibility of obtaining the extradition of French criminals, in consequence of the nature of the requirements in England for that purpose, whereby the Treaty fails to secure to France the benefits which it was anticipated would result from it. I am instructed to state to your Excellency, that Her Majesty's Government have received this communication with much regret, and if the Earl of Clarendon has delayed making any reply to it in writing, it has been in the hope that some means might be devised for meeting the wishes of the French Government without setting aside the principles of British law.

Her Majesty's Government readily admit, that as far as the extradition of French criminals, and it may be added of English criminals also, is concerned, the Treaty has fallen short of what might have been anticipated would have been the case. Still it has, perhaps, in another way not been unattended with considerable benefit to France, as well as to England, for it cannot be doubted that English and French criminals have been greatly deterred from seeking refuge in the respective countries by the conviction that, under the Extradition Treaty, there was no sure asylum for them in either.

Her Majesty's Government cannot but think that England and France derive a real and substantial advantage from a state of things which discourages the resort of foreign malefactors to their territories, and drives them to seek shelter in other countries of Europe; and that such is the effect of the Treaty, may be inferred from inquiries sometimes made at the Foreign Office, with the view of ascertaining with what countries England has Treaties of Extradition; such an inquiry was made only a few days ago, and not improbably, from the place from which it emanated, on behalf of a fugitive from justice.

The probable and immediate consequence of the cessation of the Extradition Treaty between England and France will be to inundate the two countries with criminals, fugitives from justice, who will find it much easier to cross the straits of Dover than to repair, in the case of English criminals, to the United States where, though it is difficult to trace a fugitive, there is an Extradition Treaty still in force, or to Belgium, Holland, or Germany, to which English criminals constantly resort, as affording them shelter from pursuit, which they cannot rely upon finding in France.

It cannot be questioned that the facility of escaping from justice which the abrogation of the Extradition Treaty with France will afford, is calculated to encourage crime in France as well as in England, and therefore likely to be attended with very mischievous consequences as regards both countries. Under these circumstances, it would seem to be for the interest of both countries to consider whether some means cannot be devised for removing the difficulty which has led to this measure on the part of the French Government, and the existence of which Her Majesty's Government fully admit.

The difficulty as regards France originated, it is believed, either in the law or practice of that country which precludes the production of such evidence in support of a warrant for arrest as is required by the British law.

According to the practice of England, it is sufficient that the accuser should make oath before a magistrate that such a person has committed a crime, to enable the magistrate to issue a warrant for the apprehension of the accused.

But the next step is more conclusive. The accused, in virtue of the warrant, is brought before the magistrate, and his accuser must appear with his witnesses in open Court, and there on oath, and in the hearing of the prisoner, establish to the satisfaction of the magistrate that there is sufficient grounds for assuming, first, that a crime has been committed; and, secondly, that the prisoner is the person who has committed it. This being done, the prisoner is sent to gaol to await his conviction or deliverance before a superior Court.

But this process, however sacred it is held in England for the protection of the accused, seemed to require some modification under Treaties of Extradition. If the presence before a magistrate of the accuser and his witnesses, and the delivery of their evidence orally in the presence of the prisoner had been insisted upon as indispensable, it might have been found impossible to give effect to such Treaties; for foreign accusers and foreign witnesses could not always be expected or required to repair to England and to make good their charges in the ordinary way prescribed by the law of the land.

Parliament, therefore, consented in this particular to depart from the long cherished usages of England, and sanctioned, by an Act passed on 22nd August, 1843, "for giving effect to a Convention between Her Majesty and the King of the French for the apprehension of certain offenders," a provision in the following terms, viz.: "that in every such case copies of depositions upon which the original warrant was granted, certified under the hand of the person or persons issuing such warrant, and attested upon the oath

of the party producing them to be true copies of the original depositions, may be received in evidence of the criminality of the person apprehended."

The effect of this enactment was to admit of depositions, if ample and conclusive, as a substitute for parole evidence, or, at all events, to admit of depositions being produced in support or corroboration of parole evidence.

This, looking to the feelings of the British Parliament and public in regard to matters affecting the liberty of all classes of the community, not excepting even persons suspected of crimes, was a concession of no small importance, and could only have been made from a sense of imperious necessity.

In the case of the French Extradition Treaty, however, a difficulty has arisen, whether founded on French law or merely on French practice Her Majesty's Government are unable to say, which entirely precludes the production of depositions, whether alone or coupled with parole evidence, in the case of French criminals, fugitives from justice, whose extradition may have been demanded under the Treaty of the 13th February, 1843.

The French Government are understood to consider that the production of a *mandat d'arrêt* should be sufficient without any further evidence of criminality, to secure the extradition of a criminal; and they contend, moreover, that it would not be practicable to exhibit to an English magistrate such *prima facie* evidence in support of the charge on which the *mandat d'arrêt* is issued, as the English law requires, in order to admit of extradition.

Her Majesty's Government are not exactly aware of the circumstances under which a *mandat d'arrêt* is issued, or indeed what the term itself imports. Is it a mere warrant in the first instance, such as has been described above, to be issued by an English magistrate on a simple deposition that a given person has committed a crime, and the effect of which is merely to authorize the apprehension of an accused person with a view of ascertaining by a formal, though still a preliminary, investigation, by a magistrate the truth or falsehood of the accusation, and which terminates either in the committal of the accused for trial, or his discharge, but which does not involve the punishment of the accused, or his absolution from further proceedings, should additional evidence at any future time be forthcoming? Or is it issued only after a formal hearing of witnesses, whose evidence is taken down in writing, and furnishes the materials for what in England would be called the bill of indictment (with which it is believed the French *acte d'accusation* corresponds) on which the prisoner would ultimately be tried?

In the former case it would merely seem to afford a very insufficient security that the charge is really well founded, and does not rest on mere suspicion, or on private animosity or pique. In the latter case, as the evidence would have already been reduced to writing, it is not easy to understand what insuperable difficulty exists which should prevent the documents being exhibited to an English police magistrate. The very terms of Article I of the Treaty of 1843 would seem to provide for such a course. The Article says that "this" viz., the delivery up to justice of persons accused of certain crimes, "shall be done only when 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 further on the Article says that "on the part of the British Government the surrender shall be made only on the report of a judge or magistrate duly authorized to take cognizance of the acts charged against the fugitive in the warrant of arrest, or other equivalent judicial document issued by a judge or competent magistrate in France, and likewise clearly setting forth the said Acts."

The words of the French version of the Treaty are even stronger in this respect than those of the English version:—

"Pourvu que cela n'ait lieu que dans le cas où l'existence du crime sera constatée de telle manière que les lois du pays où le fugitif ou individu ainsi accusé sera rencontré justifieraient sa détention et sa mise en jugement si le crime y avait été commis." And then, further on, "elle" (meaning the extradition) "ne sera effectuée de la part du Gouvernement Britannique que sur le rapport d'un Juge ou Magistrat commis à l'effet d'entendre le fugitif sur les faits mis à sa charge par le mandat d'arrêt, ou autre acte judiciaire équivalent, émané d'un Juge ou Magistrat compétent en France, et énonçant également d'une manière précise les dits faits."

It is clear from the whole tenour of these clauses that, in order to the extradition of a French criminal under the Treaty, there must be first a warrant setting forth on the face of it the acts of which the party is accused, and next sufficient evidence not only to establish the commission of the crime, but also to prove that the criminal act charged is a crime according to the laws of England, and is specified in the Treaty.

Now evidence can only be parole or documentary. The British Legislature, as has been seen, consented to waive the former in the case of the French Treaty, though in doing so it admitted a practice at variance with the principles of British law and usage, and agreed, in lieu of it, to accept the latter, either if complete and conclusive or in support of parole evidence. And here it may be remarked that, considering the contiguity between France and England, there would seem to be no very insurmountable difficulty in providing for the attendance, in either country, of witnesses to support a charge against a prisoner whose evidence, either alone or supplemented by depositions, might satisfy the requirements of the Treaty, which are, as regards both countries, identical, however different the practice of either in regard to them.

But the French Government demur to comply with the requirements of the Treaty in either respect, and thus it fails to obtain its fugitive criminals.

If the present state of the French law precludes the French Government from complying with the terms of the Treaty, is it too much to suggest that, as the British Legislature, in order to carry into effect the provisions of the Treaty, consented to modify the British law, the French Government should adopt the same course, and by doing so contribute, as the British Legislature has long since done, to render the Treaty operative.

Under any circumstances Her Majesty's Government would request the Government of the Emperor clearly to point out what they understand by the terms of the Treaty; what they consider is required under those terms in support of their demands for the surrender of French criminals; and whether they are prepared to adopt any course whereby the difficulties of the present state of things may be obviated.

Her Majesty's Government will be prepared to give their best consideration to any proposal which that of France may make on the subject. But I need hardly remind your Excellency that the British Government can make no alterations in the system now sanctioned by the Legislature without having recourse to Parliament for its sanction; and recent experience has shown that there would be great difficulty in obtaining from Parliament any further modification in regard to the requirements of law and usage of Great Britain in dealing with persons accused of crime.

The evil, however, to both countries of the abrogation of the safeguards now afforded by the Extradition Treaty is too evident not to make it incumbent on both to give their best attention to the possibility of maintaining it for their mutual advantage; and it is under this conviction that Her Majesty's Government are prepared to deal with the communication made to them by the French Ambassador in his note of the 4th ultimo, by which, if no expedient can be devised for maintaining the Treaty, a sure asylum for criminals fugitive from justice will henceforth be secured to such criminals in the respective countries.

It may not be irrelevant to the question between England and France to observe that the Extradition Treaty between France and the United States, as well as the law of the United States for giving effect to it, is in its most essential clauses identical with those of the English and French Treaty and English Act of Parliament for giving effect to it; I allude specifically to the proviso in the 1st Article of both Treaties, which is couched in the French version in the following terms already quoted, viz. :—

“*Pourvu que cela n'ait lieu que dans le cas où l'existence du crime sera constatée de telle manière que les lois du pays ou le fugitif ou individu ainsi accusé sera rencontrer justifieraient sa détention et sa mise en jugement si le crime y avait été commis.*”

There is no allusion here to convicts coming within the scope of the Articles, the persons so coming being previously stated to be those “*accusés des crimes,*” but in both Treaties it is stated that “*l'existence du crime sera constatée,*” &c., and to show what construction was put on this provision by the Legislature of the United States, the Act of Congress providing for this apprehension of a fugitive criminal under the Treaty, and for his being brought before the proper magistrate, says that the object of his being so brought, is, “*to the end that the evidence of criminality may be heard and considered, and if, on such hearing, the evidence be deemed sufficient,*” &c.

The same Act of Congress contains a further provision for the admission of depositions in precisely the same terms as those used in the British Act giving effect to the Treaty between Great Britain and France.

This identity of construction placed by Great Britain and the United States on their respective Extradition Treaties with France is worthy the attention of the Imperial Government, which Her Majesty's Government does not doubt will be equally given to the observations which I have thus had the honour to submit to your consideration.

I avail, &c.

(Signed) COWLEY.

Inclosure 2 in No. 6.

Earl Cowley to M. Drouyn de Lhuys.

M. le Ministre,

Paris January 23, 1866.

IN the note which I had the honour to address to your Excellency on the 20th instant, I stated that "Her Majesty's Government readily admitted that as far as the extradition of French criminals, and it might be added of English criminals also, is concerned, the Treaty of 1843 has fallen short of what might have been anticipated would have been the case." In proof of the correctness of the statement thus made with regard to English criminals, it may be as well that I should furnish your Excellency with a report of the result of the demands for extradition which, in pursuance of instructions from home, it has been my duty to make to the Imperial Government since I have had the honour to direct the business of this Embassy.

Your Excellency will find in the accompanying Memorandum a detailed account of these cases. They are but nine in number, and for the purposes of this note may be reduced to five, as three of those enumerated in the inclosed paper were set aside upon technical grounds, and in one case the prosecutors desisted from their pursuit.

In the remaining five cases Her Majesty's Government succeeded but once in obtaining the extradition demanded. On one occasion the Imperial Government does not appear to have replied to the demand made, while in those remaining, although the extradition was finally granted, yet three or four weeks had elapsed before the decision of the Imperial Government was taken, and the consequence was that the accused individuals were no more to be found.

It is not with the intention of making them the subject of complaint, that I trouble your Excellency by bringing these facts to your notice; I merely cite them as a proof that the Treaty of 1843 was not more efficacious in its results to the one Government than to the other, and that if Her Majesty's Government regret its abrogation, it is on principles of mutual interest, and not because it has been of more service to Great Britain than to France.

I have, &c.

(Signed) COWLEY.

Inclosure 3 in No. 6.

Memorandum respecting Cases of Extradition of British Subjects from France between the years 1852 and 1865.

1. Case of James Howie, fraudulent bankrupt, whose extradition is applied for, October 8, 1852, but the French Government, though consenting to the extradition, does not succeed in finding him, as recorded in a despatch dated October 29, 1852.

2. Case of Alexander Heilbroun, accused of forgery, September 12, 1853. The French Government consents to the same, October 1, 1853.

3. Case of Harry Arthur Allen, accused of forgery, whose extradition was requested December 3, 1853. To this request no reply from the French Government is to be found.

4. Case of David Landrigan, an English deserter, June 15, 1854, whose extradition the French Government refuse on the ground of desertion not being one of the crimes mentioned in the Treaty, June 30, 1854.

5. Case of Charles Healy, whose extradition is requested March 8, 1857, he being accused of fraudulent bankruptcy. The French Government consent to give him up, March 24, 1857, but the original request is withdrawn, owing to the fact of Healy's compounding with his creditors, April 24, 1857.

6. Case of Thomas Glass, whose extradition is requested, February 28, 1857, and granted March 30, 1857.

7. Case of Michael Clarke, whose extradition is asked for, June 22, 1859. The French Government reply that search will be made for him with a view to the above result, but a final despatch, dated August 22, 1859, states that no trace of him can be found.

8. Case of Baron de Vidil, whose extradition is requested, July 10, 1861, and refused, July 11, 1861, because he is a French subject.

9. Case of Francis James Leah, whose extradition is requested, September 12, 1865, but refused, September 14, 1865, because theft, the crime of which the above was accused, does not come within the scope of the Treaty.

Inclosure 4 in No. 6.

Memorandum.

IN the note with which his Excellency M. Drouyn de Lhuys furnished Lord Cowley respecting the operation of the Extradition Treaty concluded in 1843 between France and the United States, it is stated "that an accused British subject is surrendered upon the production of a simple warrant of arrest." This is an error. The warrant of arrest is invariably accompanied by certified copies of the depositions upon which the warrant has been granted, and the warrant is brought to France by a police officer able to speak to the identity of the individual whose extradition is demanded. It may be remarked that this very simple proceeding is all that is wanted to ensure the extradition from British territory of a French subject accused of crimes within the meaning of the Treaty of Extradition of 1843 between Great Britain and France.

In order to institute a just comparison between the operation of the Treaty between France and the United States, and of the Treaty between Great Britain and France, some statistical information respecting the latter should be given. It is stated in M. Drouyn de Lhuys' note that out of ten demands made on the United States five have been successful, but no similar report is made of the results of the Anglo-French Treaty.

Finally, it is stated in M. Drouyn de Lhuys' note that while Great Britain has included in the Treaty of 1862 with Denmark the extradition of condemned as well as of accused persons, the same has not been conceded to France. This is true. But the concession could not be made to France without a fresh Act of Parliament, and indeed would appear to be of very little use, unless it is intended by the Imperial Government to include among persons condemned those condemned *par contumace*.

Criminals condemned after trial seldom find means of escaping the punishment awarded them, but condemnation *par contumace*, or without trial, in the presence of the accused, is at such variance with the whole legislation of Great Britain, that it would seem hopeless to expect the sanction of Parliament to such a measure. On the other hand, it is to be observed that persons in this position might always be proceeded against in the category of accused persons.

No. 7.

The Earl of Clarendon to Sir F. Bruce.

Sir,

Foreign Office, January 24, 1866.

YOU may be aware that Her Majesty's Government have lately received from the Government of France notice of their intention to put an end to the Extradition Treaty between the two countries concluded in 1843. You will find this Treaty, and the first Act of Parliament for giving effect to it, in Volume vi of "Hertslet's Treaties," pages 344 and 448, and I inclose a copy of a further Act, that of 8 and 9 Vict., cap. 120.

In the discussions which are now being carried on with the French Government with a view of ascertaining whether it would not be possible to regulate the procedure under these Treaty and Acts of Parliament, so as to admit of the extradition of French criminals from England when demanded by the French Government, which the French Government complain they cannot obtain in consequence of what they consider the unreasonable requirements of the British magistrates, reference has not unnaturally been made to the Treaty engagements between France and the United States; and the French Government contend that they can obtain from the United States the extradition of criminals although they fail to obtain it from the Government of Great Britain.

Now, as the United States' Treaty with France and the Act of Congress, which you will find in the "State Papers," vol. xxxiii, page 1229, and vol. xxxviii, page 1065, are substantially identical as regards proof of crime with those between England and France, it is desirable that Her Majesty's Government should ascertain under what circumstances this alleged difference in the result of their operations has grown up.

The French statement as to the working of their Treaty with the United States is contained in the Memorandum given by M. Drouyn de Lhuys to Lord Cowley, of which I inclose a copy,* together with a copy of Lord Cowley's despatch, merely observing that the two recent Treaties between France and the United States, to which allusion is made, only extend the class of crimes, but do not alter the form of procedure established by the original Treaty between those Powers of the 9th of November, 1843.

* Inclosure in No. 5.

The requirements of the British magistrates are as follows: a warrant by a competent magistrate, depositions setting forth the crime, proof of identity of the accused.

Do the magistrates in the United States require less?

It is not necessary that I should enter into further details. The points that Her Majesty's Government wish you to ascertain without delay from an official source in the United States are what is the construction placed by the Government of the United States on its Treaty engagements with France, and with England also, in regard to extradition, and what are the requirements of the magistrature in the United States a compliance with which is indispensable to the surrender of criminals under Treaties of Extradition.

I have to request that you will obtain this information with the least possible delay.

I am, &c.

(Signed) CLARENDON.

No. 8.

Earl Cowley to the Earl of Clarendon.—(Received January 27.)

My Lord,

Paris, January 26, 1866.

I HAVE the honour to inclose herewith a Memorandum showing the manner of proceeding to obtain a condemnation, *par contumace*, in this country, and the consequences of such condemnation.

I have, &c.

(Signed) COWLEY.

Inclosure in No. 8.

Memorandum respecting Persons condemned in France "par Contumace."

THE preliminary investigations on which the *Acte d'Accusation* is founded, is carried on as if the accused party was present. Eight days before the day fixed for his trial, a placard is affixed at the door of the tribunal before which the case is to be tried, calling upon him to surrender and take his trial. Should he not appear, the Procureur Impérial states the case to the Court, who condemns the accused *par contumace*, without asking the opinion of a jury. The person thus condemned is allowed twenty years to, what is called in French law, "*purger sa contumace*." If within that period he either surrenders himself, or falls into the hands of the authorities, his case is submitted to the consideration of a jury. After twenty years he is considered as absolved from further molestation.

No. 9.

The Earl of Clarendon to Sir F. Bruce.

(Extract.)

Foreign Office, January 27, 1866.

WITH reference to my despatch of the 24th instant, I have to observe to you that it is stated that in the United States the mere production of a *mandat d'arrêt* is sufficient to ensure the extradition under the Treaty between France and the United States of the person named in it.

The American Minister at Paris, however, does not confirm this view of the case, but on the contrary, indicates a practice not differing essentially from the requirements of this country, at all events as regards the production and attestation of copies of the depositions on which the warrant was granted.

I should particularly wish to be informed whether the Government of the United States consider their Extradition Treaty with France as binding them to give up persons convicted in France, either after trial or *par contumace*, and who may have found means to escape from the consequences of their conviction; and, if not, what view would be taken in the United States of a proposal on the part of France to include such persons in a new Extradition Treaty.

The Earl of Clarendon to Earl Cowley.

My Lord,

Foreign Office, February 12, 1866.

I TRANSMIT to your Excellency herewith a Memorandum of what passed at the meeting, at which your Excellency was present, held at the Foreign Office on the 8th instant, respecting the Extradition Treaty with France.

I have, &c.

(Signed)

CLARENDON.

Inclosure 1 in No. 10.

Memorandum of Conference held at the Foreign Office, February 8, 1866, to consider the Extradition Question with France.

A MEETING, attended by the Secretaries of State for the Home and Foreign Departments, Her Majesty's Ambassador at Paris, the Chief Magistrate of Bow Street, and the two Under Secretaries of State in the Foreign Department, was held on Thursday the 8th of February, in order to consider the question of the Extradition Treaty with France.

It was agreed that, looking to all the difficulties which must result from that Treaty being allowed to lapse, not the least of which was that the Act of Parliament for giving effect to the Treaty would lapse with it, it was very desirable to ascertain whether some course could not be adopted in England and France for maintaining both, and making them operative for the objects for which they were designed.

The impediments which have hitherto prevented extradition, at all events on the side of England, appear to have been twofold: the first, the insufficiency of the testimony in support of French demands; and the second, the requirements of the British Police Courts, which were supposed to be too stringent.

The French demands have hitherto been supported by a mere warrant or *mandat d'arrêt*, without any evidence of identity and without any proof of crime, the French Government considering that faith should be reposed in a French warrant, that it was the duty of the English Police to search out for themselves and to satisfy themselves that the person apprehended was the person named in the warrant, and that the English Police Courts were not justified in the claim which they were considered to advance, to try the question whether the accused was guilty or not guilty.

On the other hand, the English Police Courts, resting on the Act of Parliament and on the terms of the Treaty, require that proof should be given as to identity, proof also, either oral or documentary, as to the crime having been committed, and thereupon to be satisfied that the crime comes within the definition of the Treaty, both as to its being a crime specified in the Treaty and as to the charge being sufficiently established *prima facie* as to warrant committal for trial if the crime had been committed in England.

It was assumed, however, by the meeting that the French Government would, on reflection, perceive that without identification they must always run the risk of having a wrong man arrested, and of not procuring the extradition of the criminal demanded, and that they would not insist upon a warrant alone and without evidence of any kind as sufficient to support a demand for extradition, and the question then arose what evidence could be accepted in a British Police Court.

It was observed that oral evidence beyond what was required for identification might be dispensed with, that is to say as proof of crime, but that it could not be dispensed with as establishing the fact that the proof adduced before the British magistrate was identical with that which had been produced before the French magistrate; in other words, that if depositions only were presented in support of the charge, such depositions must be certified by oral evidence on oath to be true copies of the originals in the possession of the French magistrate.

A difficulty was then suggested to exist in the French practice as militating against the production of such depositions or copies of them in preliminary proceedings against a prisoner, and the question was then considered whether any substitute for depositions could be obtained. There was an impression that the French Government was not indisposed to supplement the *mandat d'arrêt* by the production of an *acte d'accusation*. This document was represented to contain a summary of the whole case against the prisoner, much more than would be required, or even from the nature of it could be

D 2

accepted, as evidence in England, but still embodying in some form or other the actual depositions which constituted the basis of the charge against the prisoner.

It appeared to the meeting that some arrangement consistent with the requirements of the British Act might be made on this basis, if the French Government found it impossible to send over certified copies of the depositions in a simple form, unaccompanied by comment, or by what, for the purposes of extradition, would be superfluous.

For this purpose it was suggested that in the *acte d'accusation* the depositions, so far as the criminal act charged, should be textually set out, and that a witness who might be the bearer of the warrant, should be prepared to depose that the passage in question had been compared by him with the original depositions and was a correct transcript of them. Nothing short of this, unsatisfactory as it would be from indirectness, could be admitted in a police court as satisfying the requirements of the Act. But if the French Government adhered to its objections to produce the depositions themselves, which would be the simpler course and free from objection, and if a Police Magistrate might accept such a substitute, there was always a risk as to the view which, if the case were brought before it on a writ of habeas corpus, the Court of Queen's Bench might take of the case, and that it might not be satisfied with it, and might discharge a prisoner.

The question was then considered, how far the impression apparently entertained in France, that in a case of extradition the English magistrate actually tried the prisoner was well founded; and it appeared that the impression was unfounded. The prisoner brought before a magistrate on an extradition warrant would be entitled, indeed, to deny his identity with the person named in the warrant, and would further be entitled to have read in his presence the depositions on which he was charged; but he would not be permitted to controvert the truth of the depositions, or to produce before the magistrate exculpatory evidence.

The only points which the magistrate has to decide are whether the depositions make out a *prima facie* case against a prisoner on which he could be committed for trial if the crime laid to his charge came within the definition of the Treaty, and had been committed in that part of the British dominions where the prisoner was apprehended, and that the prisoner is the man accused.

The question was then considered whether the wish of the French Government for the surrender of "condemned" persons, whether after trial or *par contumace* could be complied with. As regards the first class it was considered that the crime of an escaped convict—for no person could be tried twice for the same offence—would only amount to prison breach, or escape from lawful imprisonment; but that crime does not come within the terms of the Treaty: and as regards the second class, as in France a condemnation *par contumace* is not final, the subject of it being triable in France, when captured, as if sentence had not been passed upon him in his absence, any difficulty in this respect could be obviated by omitting all allusion to such condemnation in the application for extradition, and only requiring his surrender as an accused person.

The question was then considered as to whether it were possible to extend the class of crimes subject to extradition, one of the grounds on the part of France for denouncing the Treaty being understood to be that the class of crimes was too limited. It was considered, however, that if for this purpose the present Treaty was set aside, in order that a more comprehensive one should be substituted for it, the Act of Parliament applying to the present Treaty would fall to the ground, and that instead of having, as it now has, the power of surrendering offenders within a limited specification, the Government would have to seek from Parliament a new power altogether, and therefore the whole question in regard to extradition, under any shape or under any circumstances, would have to be submitted to Parliament, which would for various reasons be undesirable.

The conclusion, therefore, was, that if any arrangements for extradition between the two countries are to be preserved, it is indispensable to hold, at all events, to those now in existence, and to endeavour to make them operative.

Having this basis as regards the future, and therefore having no occasion to raise a question as to the requirements and forms to be observed in cases of extradition, there might be less difficulty in inducing Parliament to adopt the course which has on two occasions been adopted between France and the United States. The original Treaty of Extradition between these two countries, like the original Treaty between England and France, applied to a limited number of crimes, and that number was by two successive Treaties extended so as to embrace several other crimes. But the requirements of the original Treaty as regards demands for extradition, and the forms to be observed, remained unaltered; and the subsequent Treaties were limited to an extension of the number of crimes.

It was considered that some such course might be adopted to meet the present wishes of the French Government, and that a short Treaty similar in its form, and restricted in its objects, to the latter Treaties between France and the United States, might be concluded between England and France, and submitted to Parliament, with a reasonable expectation of securing its concurrence, if not as regards all the crimes referred to in it, at all events in regard to the greater portion of them.

But no doubt whatever was felt at the meeting that the sole object now to be attended to was to render the Treaty operative as far as it went, and it was finally agreed, first, that the Chief Magistrate of Bow Street should supply forms of deposition, which, if the French magistrates would accept and act upon, would be accepted and acted upon in this country; and secondly, that if the French Government were of opinion, as the meeting was of opinion, that verbal communication and explanation might smooth away existing difficulties and misapprehensions, either a British magistrate or a British lawyer, conversant in the practice of the British Police Courts, should proceed to Paris, and be placed in communication with any French legal authority who might be appointed to confer with him.

The Chief Magistrate of Bow Street, in the course of the discussion, alluded to a French lawyer, now believed to be a Judge in one of the Courts at Paris, whom he had the pleasure of seeing some time ago in this country, who frequently attended the sittings in Bow Street, and to whom he explained the proceedings of the British Police Courts, and who afterwards published in the "Moniteur," under the title of "Mornings at Bow Street," the results of his present observations.

The forms of deposition referred to in this Memorandum are annexed.

The depositions in full are those taken at Bow Street in the case of a prisoner brought before the magistrate, having been apprehended in Spain, with the assent of the Spanish Government, on a charge of forgery. On the facts recorded in these depositions, the prisoner was committed for trial, and the depositions were remitted to the proper officer at the Old Bailey Court-house.

The depositions set forth in order—

1st. The facts of the crime.

2ndly. The proof that the prisoner at the bar of the Police Court committed it; independently of the confession which, as it appeared,

3rdly, the prisoner subsequently made to the officer who apprehended him in Spain, that he had committed it; which concession was not indispensable for sending the prisoner to trial, the other evidence being sufficient without it.

The second paper is the form of deposition used in the Police Court at Bow Street on which an application from England for extradition would be made, and which, if adopted, *mutatis mutandis*, or substantially, would be held to be sufficient in point of form to support a demand for extradition on the part of France of a criminal who had taken refuge in England.

Foreign Office, February 9, 1866.

Inclosure 2 in No. 10.

Depositions taken upon Application for a Warrant to apprehend William George Head upon a Charge of Forgery.

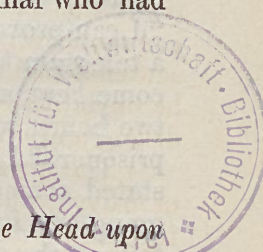
Metropolitan Police District, to wit.

The depositions of Robert James Miller and others taken on oath this 5th day of December, in the year of our Lord 1865, at the Police Court, Bow Street, in the county of Middlesex, and within the Metropolitan Police District, before me, the Undersigned, one of the magistrates of the Police Courts of the metropolis, sitting at the Police Court aforesaid.

THIS deponent, Robert James Miller, on his oath saith as follows:—I am one of the cashiers at the Bank of London, 450 Strand; Sir John Villiers Shelley and others are the trustees of that bank; Mr. John Elliott, of Tachbrook Street, Solicitor, keeps an account there. On the 17th August last the cheque for 620*l.* produced was presented to me for payment; I don't recollect by whom. I paid in the twelve 50*l.* notes produced, and 20*l.* in gold.

(Signed) R. J. MILLER.

Richard Adye Bailey, on his oath, saith:—I am a clerk in the Accountant's Bank Note Office, Bank of England. I produce twelve cancelled Bank of England notes for



50l. each, Nos. 45,084, 5, and 6, and 45,103 to 11, all dated June 9, 1865; they were brought in on the 17th of last August, in the name of John Elliott, 24, Tachbrook Street, Pimlico.

(Signed) R. A. BAILEY.

Frederick Windle Richie, sworn, saith:—I am one of the clerks in the Issue Department of the Bank of England. On the 17th August last, the twelve bank notes produced were presented to me to be changed for gold by the prisoner, to the best of my belief. In consequence of the large amount of gold required, I asked for what it was required; whether for exportation; he said it was not; that it was required for the purchase of a house; he said he came from the address on the notes, and that Mr. Elliott was a solicitor. After referring to the Principal in the office, I gave prisoner the gold.

(Signed) F. W. RITCHIE.

John Elliott, on his oath, saith:—I am a solicitor, of 24, Tachbrook Street, Pimlico. In the month of August last prisoner was in my service; he had been with me three or four months; he sat in the same room as me. I kept an account with the branch of the Bank of London, 450 Strand. The signature to the cheque produced is not in my handwriting. I did not authorize any person to put my name to this cheque. I am well acquainted with the prisoner's handwriting. This cheque is in his writing. The name, John Elliott, and the address on the note 45,111, are in the handwriting of the prisoner, who was in my service on the 17th August last. He left without my assent. I was not aware of his intention to leave. After he left I examined the "pad" he used, and found in it the piece of paper produced. On each side of it are written, "Six hundred and twenty pounds, John Elliott," in the prisoner's handwriting.

(Signed) JOHN ELLIOTT.

Joseph Huggett, on his oath, saith, I am one of the detective officers of the City of London Police Force. In consequence of instructions I received from the Foreign Office I proceeded to Spain. I saw the prisoner at Viego on the 4th November last in a prison in the name of Thornton. I had with me the warrant issued at this Court. I said to the prisoner, William George Head, "I am an officer from England; I apprehend you on this warrant for forging your master's name, Mr. John Elliott, to a cheque for 620l., and uttering it at the Bank of London, Charing Cross Branch, and receiving the money." He said, "I guess you are very wrong, my name is Thornton; I don't know why I am detained here." I said, "You use the word 'guess,' are you an American?" He answered, "I was born in New Bedford, in the county of Massachusetts, United States. When do you say the warrant was signed?" I said, "17th August." He said, "I can prove I was in Oporto on 17th August." I said, "If that's the case, I must send a telegram to Mr. Elliott, of Pimlico, and also a telegram to the Consul at Oporto, to come here and identify you as William George Head." The prisoner was then left for two hours, when I again went to him with Mr. Brackenbury, the Consul, who said to the prisoner "I must take your statement upon oath." Prisoner refused to be sworn, but stated something, which the Consul was taking down, when prisoner said, "It's useless going any further, I am the person named in that warrant; will you be kind enough to tell me the date again?" I told him the 17th August. He asked the amount. I told him 620l. He said, "The date and amount are quite right—I am the person named in that warrant." I told him he would have to return to England with me. He said he was willing to do so, and I received him from the Spanish authorities. I found 5s. upon the prisoner, and in his carpet bag two loaded pistols.

(Signed) JOSEPH HUGGETT.

The above witnesses were severally sworn before me, at the Police Court aforesaid, on the day and year first written.

(Signed) THOMAS HENRY,

Chief Magistrate of the Police Courts of the Metropolis.

Inclosure 3 in No. 10.

The depositions of A. B., C. D., E. F., &c., taken on oath this day of ,
in the year of our Lord 186 , at the Police Court, Bow Street, in the county of
Middlesex, and within the Metropolitan Police district, before me the Undersigned,
one of the Magistrates of the Police Courts of the metropolis, sitting at the Police
Court aforesaid.

THIS deponent, , on his oath saith as follows :

Here set forth fully the facts to establish the criminality of the accused.

If the charge be that of forgery, set forth a *verbatim* copy of the document or instru-
ment alleged to be forged.

If the charge be that of fraudulent bankruptcy, the nature of the fraud should be
fully stated, as there are several kinds of fraudulent bankruptcy known to our law.

The depositions, and also the *mandat d'arrêt*, should specify the particular description
of fraudulent bankruptcy with which the accused is charged.

Each witness ought to sign his name at the end of his deposition.

At the end of all the depositions the magistrate should write "severally sworn before
me the day and year first named at

(Signed) A. B.,

Magistrate for

Form of Certificate on Copy of Depositions.

I, the undersigned magistrate for , do hereby certify that the above
are true copies of the depositions upon which a *mandat d'arrêt* for the apprehension of
C. D., late of , but now supposed to be residing at ,
was issued by me under my hand and seal day of , 186 .

(Signed) A. B.,

Magistrate for

No. 11.

Earl Cowley to the Earl of Clarendon.—(Received February 14.)

My Lord,

Paris, February 13, 1866.

I HAD a long conversation this afternoon with M. Drouyn de Lhuys on the subject
of the denunciation of the Extradition Treaty, and I read to his Excellency the very clear
and circumstantial Memorandum drawn up in your Lordship's office of the proceedings of
the Conference held there on the 8th instant, inclosed in copy in your despatch of
yesterday's date.

On the whole, M. Drouyn de Lhuys received this communication favourably, and he
is convinced of the desire of Her Majesty's Government to render the working of the
Treaty as efficacious as possible.

He intends to propose to his colleague, the Minister of Justice, that a Conference
shall be held here at the Foreign Department, to which I am invited. After that
Conference it will, in his Excellency's opinion, be time to decide whether the offer made
by Her Majesty's Government to send a British Magistrate to Paris shall be availed of
or not.

In the meantime there are two points on which M. Drouyn de Lhuys wishes for
further information. Supposing it to be decided that for French purposes it is preferable
to furnish the depositions necessary to back the *mandat d'arret*, or warrant of arrest, by
means of an *acte d'accusation*, such act requires some time for its preparation, during
which an accused person might make his escape, would it be possible, his Excellency's
asks, to obtain the preliminary arrest of such accused person on the simple production of
the French warrant, a time being fixed within which the necessary depositions must be
produced, or the accused set at liberty?

I explained to M. Drouyn de Lhuys that when a magistrate in England was not
satisfied by means of the first witnesses produced, that there was sufficient evidence to
send the accused to trial, he might remand him from time to time for the production of
further evidence, but that I doubted whether a simple warrant, though it might set forth
the crime, would be sufficient without any evidence at all to insure the apprehension and
remand of a person whose extradition was demanded. I should be glad to have, at your
Lordship's earliest convenience, the opinion of Sir Thomas Henry on this point.

M. Drouyn de Lhuys wishes further to know whether, in the opinion of Her Majesty's Government, the persistence of the French Government to have persons condemned after trial, who might escape from the hands of justice to British possessions, included in a supplementary Treaty, should such an Act be resorted to, would imperil the chance of such Treaty being sanctioned by Parliament. Persons condemned *par contumace*, his Excellency admits, could be claimed as accused persons.

M. Drouyn de Lhuys is quite satisfied with the proposal that additional crimes should be made the object of a Supplementary Convention.

I have, &c.
(Signed) COWLEY.

No. 12.

The Earl of Clarendon to Earl Cowley.

My Lord,

Foreign Office, February 16, 1866.

UPON the receipt of your Excellency's despatch of the 13th instant, I requested the opinion of Sir Thomas Henry on the two points on which M. Drouyn de Lhuys desired further information in regard to cases of extradition between this country and France.

I now transmit to your Excellency a copy of a letter from Sir Thomas Henry stating his views upon this subject.

I am, &c.
(Signed) CLARENDON.

Inclosure in No. 12.

Sir T. Henry to Mr. Hammond.

Dear Mr. Hammond,

Bow Street, February 15, 1866.

THE simple production of a *mandat d'arrêt*, without any depositions or any oral evidence, would not be sufficient to obtain the arrest of an accused person. A warrant for the apprehension of an accused person cannot be issued in England unless there is some *prima facie* proof, either by depositions or oral evidence, to show that the accused had committed one of the offences named in the Treaty. The evidence need not be complete at the first hearing, as an English magistrate has the power to "remand" to an adjourned day or days for any additional proof that might be requisite.

Practically, I should think there can be no difficulty in sending over copies of the depositions upon which the *mandat d'arrêt* was granted. All that an English magistrate would require would be the production of the *mandat d'arrêt*, and certified copies of the depositions upon which it was issued. If they disclose a sufficient *prima facie* case the accused would be surrendered to take his trial before a French jury.

I conclude by expressing my confident belief that the existing Treaty may be carried into effect so as to give satisfaction to both countries.

Very truly yours,
(Signed) THOMAS HENRY.

No. 13.

Earl Cowley to the Earl of Clarendon.—(Received February 21.)

(Extract.)

Paris, February 20, 1866.

I HAD yesterday an interview with M. Baroche, the Minister of Justice, upon the subject of the Extradition Treaty.

M. Baroche inquired whether it would not be sufficient if the depositions were certified diplomatically; that is, that they should first receive his signature as a voucher for their exactitude; that his signature should be certified by the Minister for Foreign Affairs; and so on until they reached your Lordship's Department; his object apparently being that the magistrate's signature should be verified by a superior and not by an inferior authority.

M. Baroche asks, further, whether the identity of an accused person may not be

proved by other individuals than a police officer; for instance, by the person accusing him.

M. Drouyn de Lhuys and myself both agree that it will be necessary that Her Majesty's Government should send a competent lawyer to Paris, understanding the French language, who could discuss all these matters and put them into form with persons delegated by the French Government. It is feared that so short a visit as Sir Thomas Henry could make would not give sufficient time to effect this purpose, though when matters are further advanced his presence here for a few hours might be attended with the greatest advantage.

No. 14.

The Earl of Clarendon to Earl Cowley.

My Lord,

Foreign Office, March 3, 1866.

I HAVE referred to Her Majesty's Secretary of State for the Home Department portions of your Excellency's despatch of the 20th ultimo, adverting to certain questions which had been raised at an interview which your Excellency has had with M. Baroche in regard to the legalization of the depositions to be produced, the evidence to be required for the identity of the accused, and the arrangements to be made for discussing at Paris the various questions connected with extradition.

I now transmit to your Excellency, for your information, a copy of a letter from the Home Office in reply to the above reference.

I am, &c.
(Signed) CLARENDON.

Inclosure in No. 14.

Mr. Waddington to Mr. Hammond.

Sir,

Whitehall, February 28, 1866.

I HAVE laid before Secretary Sir George Grey your letter of the 21st instant, inclosing extracts of a despatch from Her Majesty's Ambassador at Paris, in reference to the Extradition Treaty with France, and asking for Sir George Grey's opinion upon three points:—

1. The legalization of the depositions to be produced.
2. The evidence to be required of the identity of the accused.
3. The arrangements to be made for discussing at Paris the various questions connected with extradition.

And I am to request that you will state to the Earl of Clarendon in reply:—

1. That by the law of this country depositions must be attested upon the oath of the party producing them to be true copies of the original depositions on which the warrant for apprehension was granted. The law can only be altered in this respect by Parliament, which may very possibly object to the diplomatic mode of verification proposed by M. Baroche. At all events Her Majesty's Government cannot give any assurance on the subject.

2. The identity of the accused may now be proved by any witness who knows the party; there can therefore be no difficulty on that head.

3. Sir George Grey will endeavour to make arrangements for sending to Paris a barrister who is competent to discuss the subject.

I am, &c.
(Signed) H. WADDINGTON.

No. 15.

Sir F. Bruce to the Earl of Clarendon.—(Received March 9.)

My Lord,

Washington, February 23, 1866.

I HAVE the honour to transmit copies of a note which I have received from the Acting Secretary of State and of its inclosures relative to the interpretation of the United States' Extradition Treaty with France.

I have, &c.
(Signed) FREDERICK W. A. BRUCE.

Inclosure 1 in No. 15.

Mr. Seward to Sir F. Bruce.

Sir,

Department of State, Washington, February 23, 1866.

WITH reference to your communication of the 13th instant, inquiring, at the instance of your Government, for information in regard to the interpretation of our Extradition Treaty with France by the Judges and Commissioners in our country, and whether the United States' Government consider themselves bound, under their present Treaty with France, to deliver up persons convicted in that country, either after trial or by the procedure, known as conviction *par contumace*, and who may have escaped from the consequences of conviction, I have the honour to inclose, for your information upon these subjects, a copy of a letter from the District Attorney for the southern district of New York of the 20th instant, together with three printed copies of the Act of Congress of June 22, 1860, therein referred to.

I have, &c.
(Signed) WILLIAM H. SEWARD.

Inclosure 2 in No. 15.

Mr. Dickinson to Mr. Seward.

Office of District Attorney of the United States for the
Southern District of New York,

New York, February 20, 1866.

Sir,

I HAVE the honour to acknowledge the receipt of your communications dated respectively on the 13th and 15th instant, inclosing certain questions in reference to the practical working of the Extradition Treaty between France and the United States, with the request that I would endeavour to have the same answered.

I have carefully considered the subject referred to, and have conferred with the United States' Commissioners in this district who have most frequently had occasion to exercise their magisterial powers for the purpose of returning criminals under the various Extradition Treaties with foreign countries, and have examined such adjudications on the questions at issue, as are reported in the books.

The following is the result of my inquiries:—

A simple *mandat d'arrêt* or *capias*, issued by a French *Juge de Paix*, does not entitle the French Government to the extradition from this country of a person accused of a crime provided for by the Treaty.

The proceedings which must be taken here to enable the French authorities to obtain the extradition of such a person are—

1st. A complaint made under oath or affirmation before an officer vested with the requisite authority, charging such person with having committed within the jurisdiction of the French Government, a crime enumerated in the Treaty. On this complaint a warrant is issued for the apprehension of the accused.

2nd. On the accused being brought before the magistrate, such evidence must be presented as would be deemed sufficient by that officer to commit him for trial, if the crime had been committed here.

This evidence may consist of parole testimony, or copies of the depositions and other papers upon which an original warrant may have been granted in France, legally authenticated, so as to entitle them to be received for similar purposes in that country.

3rd. The parole evidence of a witness who can identify the accused. Written depositions may be admitted in evidence, without parole evidence, where their authentication is attested, as provided by the Act of Congress, approved June 22, 1860, 12th "Statutes at Large," p. 84, § 1.

There is nothing, however, in the statute to prevent their attestation by parole.

The Commissioners whom I have consulted do not consider that the Extradition Treaty with France would warrant them in giving up escaped convicts who had been convicted either after trial or *par contumace*, merely on the record of their conviction. They would require the same evidence in such cases as if the accused had not been convicted.

In this view of the law I concur with the Commissioners, nor would I deem it good policy for the Government to include the return of such persons within the provisions of an Extradition Treaty on any other basis. The return of persons whose presence for

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other reasons might be desired in a foreign country, could be secured with much ease if the record of a conviction *par contumace* was sufficient for that purpose.

I have, &c.
(Signed) D. S. DICKINSON,
United States District Attorney.

Inclosure 3 in No. 15.

An Act to amend an Act entitled "An Act for giving Effect to certain Treaty Stipulations between this and Foreign Governments for the Apprehension and Delivery up of certain Offenders."

BE it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that in all cases where any depositions, warrants, or other papers, or copies thereof, shall be offered in evidence upon the hearing of an extradition case under the second section of the Act entitled "An Act for giving Effect to certain Treaty Stipulations between this and Foreign Governments for the Apprehension and Delivery up of certain Offenders," approved August twelfth, eighteen hundred and forty-eight, such depositions, warrants, and other papers, or copies thereof, shall be admitted and received for the purposes mentioned in the said section, if they shall be properly and legally authenticated, so as to entitle them to be received for similar purposes by the tribunals of the foreign country from which the accused party shall have escaped, and the certificate of the principal Diplomatic or Consular officer of the United States resident in such foreign country shall be proof that any paper or other document so offered is authenticated in the manner required by this Act.

Approved June 22, 1860.

No. 16.

Earl Cowley to the Earl of Clarendon.—(Received April 11.)

(Extract.)

Paris, April 9, 1866.

SIR THOMAS HENRY having been over here for a few days last week, I profited by his presence to put him in communication with the Minister of Justice, with a view of seeing whether, by the explanations which he might be able to give of the procedure in the Police Courts in England, he could not satisfy M. Baroche that the Extradition Treaty between Great Britain and France might still be executed with benefit to both countries.

A meeting was held at the Ministry of Justice on the 2nd instant, at which were present M. Drouyn de Lhuys, M. Baroche, and M. Babinet, one of the Secretaries in the Department of Justice, Sir Thomas Henry, and myself.

Nothing could exceed the courtesy of the French officials on this occasion. They listened with great attention and patience, and with an apparent wish to turn them to good account, to the explanation which Sir Thomas Henry was enabled to furnish them; but I fear that unless Her Majesty's Government are willing to submit for the consideration of Parliament some modifications of, and additions to the present Treaty, it will be allowed to expire at the end of the six months' denunciation.

The great difficulty is with regard to swearing to the truth of the depositions which may be taken to England to substantiate a crime committed in this country. It seems impossible to get over the reluctance which is felt by the French magistrature to submit the depositions which they have taken to the examination of an inferior officer. They would prefer sending the depositions in original, but the proof of their originality would be equally difficult to substantiate. M. Baroche continues to offer as a substitute that the Minister of Justice should certify to the truth of the copies of depositions sent to England, that magistrate's signature being legalized for the English Courts in the manner usually followed for verifying signatures.

The French Government desires also to make any new or any supplementary Treaty more comprehensive.

The necessity of identifying the accused party was fully admitted.

In the course of the interview it was stated that France had no less than fifty-three Treaties of Extradition with other countries, all of which had been followed by satisfac-

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tory results. There could therefore be no other object, M. Baroche observed, in denouncing the Treaty with England, than its total failure.

There can, I think, be no doubt that the Act of Parliament sanctioning the Extradition Treaty of 1843, while intending to give facilities which the Treaty itself did not give, viz., the admission of documentary evidence, rather had the contrary effect, and that if oral evidence had been insisted upon, the Treaty might have worked better.

I beg leave to refer your Lordship to Sir Thomas Henry for any further explanations which may be necessary, as, after the interview to which I have alluded, he remained in communication with the French authorities, and before leaving Paris made himself thoroughly acquainted with the proceedings of the French Criminal Courts.

No. 17.

Sir T. Henry to the Earl of Clarendon.—(Received April 30.)

My Lord,

Bow Street, April 20, 1866.

The difficulty experienced in giving effect to the Treaty with France arises from some words in the second section of the Extradition Act, 7th Victoria, cap. 75. The object of that section was to obviate the necessity of sending witnesses from one country to the other, and with that view it enacted that copies of the depositions upon which the French warrant of arrest was granted may be received in evidence if "certified under the hand of the person issuing such warrant, and attested upon the oath of the party producing them, to be true copies of the original depositions."

The words in *italics* have given rise to the difficulty which I will shortly explain; when the French Government applies for the extradition of an accused fugitive, the practice has been to transmit a warrant of arrest, and copies of depositions certified under the hand and seal of the "Juge d'Instruction" who issued the warrant, and verified by the signature and seal of the Minister of Justice; requisition is thereupon made by the French Ambassador to one of Her Majesty's Secretaries of State, who directs that application shall be made to the Chief Magistrate of this Court to issue his warrant for the apprehension of the accused; before that can be done it is absolutely necessary that the "*person producing the copies should attest upon oath that they are true copies; he cannot so attest unless he has compared them with the original depositions, and to do that it becomes necessary that he should apply to the Judge in France who signed the certificate; and ask permission to see the original depositions, so that he may compare, and be able to attest, that the copies are true copies, or, in other words, that he may be able to swear that the Judge had certified truly.*"

At the interview which Lord Cowley and I had with the Minister of Justice (M. Baroche), he said that the French Judges considered it an indignity that their certificates should be treated as unworthy of any confidence, and that a person, usually a common policeman, should be sent into their Chambers, requiring to see the original depositions in order to ascertain whether the Judges had given true certificates. He stated that France had fifty-three Extradition Treaties, and that all other countries were perfectly satisfied with the official certificates which authenticated their warrants and depositions. He remarked that all criminal proceedings in France were conducted by the State, under the supervision of the Attorney-General and the Minister of Justice, and that it was not to be supposed that they would send false copies of depositions.

I think it right to say that I had ample opportunity of seeing, and examining minutely, the French criminal procedure in all its stages, and I was very much impressed with the painstaking and careful manner in which the cases are investigated. I beg leave, therefore, to offer my opinion that we may safely trust to the accuracy of the certified copies, verified, as they all are, by the signature of the Minister of Justice, and I think that we ought to dispense with the attestation upon oath which has given so much offence. If that view should be adopted, a short Bill might be introduced to alter the second section by omitting the objectionable words. I believe, if that can be done, the French Government may be induced to withdraw their notice, and to allow the existing Treaty to continue in force, or, if it be deemed more desirable, they would enter into a new Treaty, or add a Supplementary Article to the existing Treaty, for the purpose of adding to the list of crimes for which extradition might be claimed.

M. Drouyn de Lhuys said that the English Government might select and name the crimes they wish to add. His language was most conciliatory upon the whole question, and I feel convinced that he is ready to act in the most amicable spirit. M. Baroche also discussed the subject in very friendly terms, and I am therefore induced to express

my belief that both those Ministers are well disposed to arrive at a satisfactory arrangement.

It would be a subject of just regret if the Treaty were broken off for so small a cause, and I have no doubt that the commercial world would soon find a large increase in the crimes of forgery and embezzlement, and a great addition to the number of fugitives.

I will draw a clause on the next page with a view to obviate the difficulty that has hitherto been experienced in proving depositions, but such a clause will of course only be available in the event of the existing Treaty remaining in force. If the Treaty is allowed to expire, the two Extradition Acts expire with it, and if there be a new Treaty, there must be a new Act to give effect to it. The clause which I shall annex will simply be to amend the 2nd section of the 7th Vict., chap. 75.

If it be thought desirable, the clause can easily be made applicable to cases of extradition under the Treaties with the United States and with Denmark.

Apologizing for having trespassed at such length upon your Lordship's attention, I have, &c.

(Signed) THOMAS HENRY.

Inclosure in No. 17.

Suggestions for an Amendment Bill.

TITLE.

AN ACT to Facilitate the Admission in Evidence of Official Documents in cases arising under the Treaty of Extradition with France.

WHEREAS difficulties have been experienced in carrying into execution the Treaty of Extradition with France; and whereas the Act passed in the seventh year of the reign of Her Majesty, entitled "An Act for giving effect to a Convention between Her Majesty and the King of the French for the Apprehension of certain Offenders," has been found insufficient, and it is expedient to amend the same, so far as it relates to the admission in evidence of judicial or official documents, or copies of documents: Be it enacted, that warrants of arrest, and copies of depositions, signed or taken by or before a Judge or competent Magistrate in France, shall henceforth be received in evidence, if authenticated in manner following, that is to say, if the warrant of arrest purports to be signed by a Judge or competent Magistrate, and if the copies of depositions purport to be certified under the hand of such Judge or Magistrate to be true copies of the original depositions upon which the warrant was issued, and if the signature of the Judge or magistrate shall in each case be authenticated officially by the signature and seal of the Minister of Justice in France; and all Courts of Justice and Magistrates shall take judicial notice of the said seal, and admit the documents so authenticated by it to be received in evidence without further proof.

This Act shall be deemed part of, and shall be construed with, an Act passed in the seventh year of the reign of Her Majesty (chapter 25), and entitled "An Act for giving effect to a Convention between Her Majesty and the King of the French for the Apprehension of certain Offenders."

And this Act shall likewise be construed with, and deemed part of an Act passed in the fifteenth year of the reign of Her Majesty (chapter 113), and entitled "An Act to amend the Law of Evidence."

NOTE.—See the Acts for admission of evidence, 8 & 9 Vict., chap. 113; and 14 & 15 Vict., chap. 99, secs. 7 and 13.

No. 18.

Mr. Hammond to Mr. Waddington.

Sir, *Foreign Office, May 9, 1866.*
 WITH reference to the correspondence between the two Departments respecting the denunciation by the French Government of the Extradition Treaty with this country of 1843, I am directed by the Earl of Clarendon to transmit to you herewith, to be laid

before Secretary Sir George Grey, a letter from Sir Thomas Henry, suggesting a mode of removing the difficulty which results from the terms of the second Article of the Act of the 7th Vict., cap. 75.

I am also to inclose a Report from the Law Officers of the Crown, from which Sir George Grey will see that they consider that a short Bill might be introduced into Parliament applicable to all cases of extradition under Treaties between this Government and foreign States, which might enable Her Majesty's Government to introduce into all such Treaties the amendment which Sir Thomas Henry has sketched out with regard to the admission in evidence of certified copies of official and political documents. I am to request that you will state to Sir George Grey that if he concurs in this view of the matter, Lord Clarendon would be glad if he would give directions for the draft of a Bill to be immediately prepared in conformity with the suggestions of the Law Officers, so that no time may be lost in presenting it to Parliament. The Extradition Treaty with France will expire on the 4th of June, and with it the Act of 1843 for giving effect to it; and Lord Clarendon would therefore be obliged to Sir George Grey to inform him as soon as possible whether he agrees in the course recommended by Sir Thomas Henry, and concurred in by the Law Officers.

I send with this, for convenience of reference, the correspondence with Lord Cowley and the Law Officers of the Crown on this subject, the greater portion of which, however, is already in possession of the Home Office.

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

No. 19.

Mr. Waddington to Mr. Hammond.—(Received May 12.)

Sir,

Whitehall, May 11, 1866.

I HAVE laid before Secretary Sir George Grey your letter of the 9th instant, and accompanying papers, in reference to the introduction of a Bill to remove a difficulty which exists in carrying out the Treaty of Extradition between this country and France; and I am to acquaint you, for the information of the Earl of Clarendon, that Sir George Grey has called upon the Attorney and Solicitor-General, and the Queen's Advocate, to prepare a Bill in accordance with the recommendation made in their Report to Lord Clarendon of the 8th instant, for the consideration of Her Majesty's Government.

I am, &c.
(Signed) H. WADDINGTON.

No. 20.

The Prince de la Tour d'Auvergne to the Earl of Clarendon.—(Received May 22.)

M. le Comte,

Londres, le 21 Mai, 1866.

VOTRE Excellence se rappellera sans doute, qu'aux termes de la déclaration que j'ai eu l'honneur de lui faire, le 4 Décembre dernier, pour dénoncer, au nom du Gouvernement de l'Empereur, le Traité d'Extradition du 13 Février, 1843, cet acte devrait cesser de produire ses effets dans les six mois, c'est-à-dire, le 5 Juin, 1866.

Toutefois, à la suite des pourparlers qui ont eu lieu récemment à Paris entre M. l'Ambassadeur de Sa Majesté Britannique à Paris, accompagné du Premier Magistrat de Police de Londres, et le Gouvernement de l'Empereur, il a été convenu qu'une nouvelle épreuve serait tentée pour exécuter le Traité, et, dans ce but, nous avons adressé dernièrement aux autorités Anglaises une demande d'extradition.

Dans ces circonstances, M. le Ministre des Affaires Etrangères a dû examiner si, dans l'intérêt de l'essai qui suit son Cours en ce moment même, il n'y aurait pas convenance à prolonger temporairement l'existence du Traité. Son Excellence M. Drouyn de Lhuys me charge donc de vous annoncer officiellement, M. le Comte, que le Gouvernement de l'Empereur, désireux de donner au Gouvernement de la Reine une preuve de son bon vouloir, consent à prolonger le Traité de six mois. M. le Ministre des Affaires Etrangères ajoute d'ailleurs, que cette résolution, qui nous est dictée à la fois, et par nos sentiments d'amitié, et par le désir sincère d'employer tous les moyens d'arriver à une entente, laisse subsister, dans leur intégrité, les objections que le Gouvernement de l'Empereur a élevées contre la Convention de 1843, et qui l'ont conduit à la dénoncer.

Veillez, &c.
(Signé) PCE. DE LA TOUR D'AUVERGNE.

(Translation.)

M. le Comte,

London, May 21, 1866.

YOUR Excellency will doubtless recollect that, according to the terms of the declaration which I had the honour to make to you on the 4th of December last, for the purpose of denouncing in the name of the Imperial Government the Extradition Treaty of February 13, 1843, the said Act would cease to have effect within six months from that time, namely, on the 5th of June, 1866.

Nevertheless, in consequence of the Conferences which have recently taken place at Paris between Her Britannic Majesty's Ambassador at Paris, accompanied by the Chief Police Magistrate of London, and the Imperial Government, it has been agreed that a new attempt should be made to put the Treaty in execution, and with this object we have lately addressed a demand for extradition to the English authorities.

Under these circumstances the Minister for Foreign Affairs has felt called upon to consider whether, in the interest of the trial which is at present in progress, it would not be proper to temporarily prolong the existence of the Treaty. His Excellency, M. Drouyn de Lhuys, instructs me therefore to announce to you officially, M. le Comte, that the Imperial Government, desirous of affording Her Majesty's Government a proof of their goodwill, consent to the prolongation of the Treaty for six months. The Minister for Foreign Affairs adds further that this resolution, which is equally dictated both by our sentiments of friendship and by the sincere desire to employ every means to arrive at an understanding, does not in any way affect the objections which the Imperial Government have raised against the Convention of 1843, and which have induced them to denounce it.

Be good enough, &c.

(Signed)

PCE. DE LA TOUR D'AUVERGNE.

No. 21.

The Earl of Clarendon to the Prince de la Tour d'Auvergne.

M. l'Ambassadeur,

Foreign Office, May 25, 1866.

I HAVE the honour to acknowledge the receipt of your letter of the 21st instant, acquainting me that the Imperial Government is willing to extend for six months the period which, according to your Excellency's previous letter of the 4th of December, should arrive on the 5th of June next for the termination of the Extradition Treaty between the two countries of the 13th of February, 1843.

Her Majesty's Government do full justice to the motives which have influenced the Imperial Government in coming to this decision; and in apprising your Excellency of the acceptance of the proposal by the Government of Her Majesty, I have to add that Her Majesty's Government hope that this extension of time for deliberation may lead to the understanding which is so much desired on the questions between the two Governments.

I am, &c.

(Signed)

CLARENDON.

No. 22.

The Earl of Clarendon to Earl Cowley.

(No. 750.)

My Lord,

Foreign Office, May 25, 1866.

I TRANSMIT to your Excellency herewith, for your information, a copy of a letter which I have received from the Prince de la Tour d'Auvergne* proposing on the part of his Government the extension of the Extradition Treaty for a period of six months.

I also inclose a copy of the answer which I have returned to the French Ambassador, informing him of the acquiescence of Her Majesty's Government in this proposal.†

I am, &c.

(Signed)

CLARENDON.

* No. 20.

† No. 21

APPENDIX.

Convention between Great Britain and France, for the mutual Surrender, in certain Cases, of Persons fugitive from Justice.—Signed at London, February 13, 1843.

[Ratifications exchanged at London, March 13, 1843.]

HER Majesty the Queen of the United Kingdom of Great Britain and Ireland, and His Majesty the King of the French, having judged it expedient, with a view to the better administration of justice, and to the prevention of crime within their respective territories and jurisdictions, that persons charged with the crimes hereinafter enumerated, and being fugitives from justice, should, under certain circumstances, be reciprocally delivered up ;

Their said Majesties have named as their Plenipotentiaries to conclude a Convention for this purpose, that is to say :—

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, the Right Honourable George Earl of Aberdeen, Viscount Gordon, Viscount Formartine, Lord Haddo, Methlick, Tarvis, and Kellie, a Peer of the United Kingdom, a Member of Her Majesty's Most Honourable Privy Council, Knight of the Most Ancient and Most Noble Order of the Thistle, and Her Majesty's Principal Secretary of State for Foreign Affairs ;

And His Majesty the King of the French, the Sieur Louis de Beaupoil, Count of Sainte Aulaire, a Peer of France, Grand Officer of the Royal Order of the Legion of Honour, Grand Cross of the Order of Leopold of Belgium, his Ambassador Extraordinary to Her Britannic Majesty ;

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following Articles :—

ARTICLE I.

It is agreed that the High Contracting Parties shall, on requisitions made in their name through the medium of their respective Diplomatic Agents, deliver up to justice persons who, being accused of the crimes of murder (comprehending the crimes designated in the French Penal Code by the terms assassination, parricide, infanticide, and poisoning), or of an attempt to commit murder, or of forgery, or of fraudulent

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SA Majesté la Reine du Royaume Uni de la Grande Bretagne et d'Irlande, et Sa Majesté le Roi des Français, ayant jugé convenable, en vue d'une meilleure administration de la justice, et pour prévenir les crimes dans leurs territoires et juridictions respectives, que les individus accusés des crimes ci-après énumérés, et qui se seraient soustraits par la fuite aux poursuites de la justice, fussent, dans certaines circonstances, réciproquement extradés ;

Leurs dites Majestés ont nommé pour leurs Plénipotentiaires à l'effet de conclure dans ce but une Convention, savoir :—

Sa Majesté la Reine du Royaume Uni de la Grande Bretagne et d'Irlande, le Très Honorable George Comte de Aberdeen, Vicomte Gordon, Vicomte Formartine, Lord Haddo, Methlick, Tarvis, et Kellie, Pair du Royaume Uni, Conseiller de Sa Majesté en son Conseil Privé, Chevalier du Très Ancien et Très Noble Ordre du Chardon, et Principal Secrétaire d'Etat de Sa Majesté pour les Affaires Etrangères ;

Et Sa Majesté le Roi des Français, le Sieur Louis de Beaupoil, Comte de Sainte Aulaire, Pair de France, Grand Officier de l'Ordre Royal de la Légion d'Honneur, Grand Croix de l'Ordre de Léopold de Belgique, son Ambassadeur Extraordinaire près Sa Majesté Britannique ;

Lesquels, après s'être communiqué leurs pleins pouvoirs respectifs, trouvés en bonne et due forme, ont arrêté et conclu les Articles suivants :—

ARTICLE I.

Il est convenu que les Hautes Parties Contractantes, sur les réquisitions faites en leur nom par l'intermédiaire de leurs Agents Diplomatiques respectifs, seront tenues de livrer en justice les individus qui, accusés des crimes de meurtre (y compris les crimes qualifiés dans le Code Pénal Français d'assassinat, de parricide, d'infanticide, et d'empoisonnement), ou de tentative de meurtre, ou de faux, ou de banqueroute frauduleuse,

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bankruptcy, committed within the jurisdiction of the requiring party, shall seek an asylum, or shall be found within the territories of the other: provided that this shall be done only when 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.

Consequently, on the part of the French Government, the surrender shall be made only by the authority of the Keeper of the Seals, Minister of Justice, and after the production of a warrant of arrest or other equivalent judicial document, issued by a Judge, or other competent authority, in Great Britain, clearly setting forth the acts for which the fugitive shall have rendered himself accountable; and on the part of the British Government, the surrender shall be made only on the report of a Judge or Magistrate duly authorized to take cognizance of the acts charged against the fugitive in the warrant of arrest or other equivalent judicial document, issued by a Judge or competent Magistrate in France, and likewise clearly setting forth the said acts.

ARTICLE II.

The expenses of any detention and surrender made in virtue of the preceding Article, shall be borne and defrayed by the Government in whose name the requisition shall have been made.

ARTICLE III.

The provisions of the present Convention shall not apply in any manner to crimes of murder, forgery, or fraudulent bankruptcy, committed antecedently to the date thereof.

ARTICLE IV.

The present Convention shall be in force until the 1st of January, 1844, after which date either of the High Contracting Parties shall be at liberty to give notice to the other of its intention to put an end to it; and it shall altogether cease and determine at the expiration of six months from the date of such notice.

ARTICLE V.

The present Convention shall be ratified, and the ratification shall be exchanged at London at the expiration of three weeks from its date, or sooner if possible.

In witness whereof the respective Pleni-

commis dans la juridiction de la partie requérante, chercheront un asile, ou seront rencontrés dans les territoires de l'autre: pourvu que cela n'ait lieu que dans le cas où l'existence du crime sera constatée de telle manière que les lois du pays où le fugitif ou individu ainsi accusé, sera rencontré, justifieraient sa détention, et sa mise en jugement, si le crime y avait été commis.

En conséquence, l'extradition ne sera effectuée, de la part du Gouvernement Français, que sur l'avis du Garde de Sceaux, Ministre de la Justice, et après production d'un mandat d'arrêt ou autre acte judiciaire équivalent, émané d'un Juge ou d'une autorité compétente de Grande Bretagne, énonçant clairement les faits dont le fugitif se sera rendu coupable; et elle ne sera effectuée de la part du Gouvernement Britannique, que sur le rapport d'un Juge ou Magistrat commis à l'effet d'entendre le fugitif sur les faits mis à sa charge par le mandat d'arrêt ou autre acte judiciaire équivalent, émané d'un Juge ou Magistrat compétent en France, et énonçant également d'une manière précise les dits faits.

ARTICLE II.

Les frais de toute détention et extradition opérées en vertu de l'Article précédent, seront supportés et payés par le Gouvernement au nom duquel la requisition aura été faite.

ARTICLE III.

Les dispositions de la présente Convention ne s'appliqueront en aucune manière aux crimes de meurtre, de faux, ou de banqueroute frauduleuse, commis antérieurement à sa date.

ARTICLE IV.

La présente Convention sera en vigueur jusqu'au 1 Janvier, 1844; après cette époque l'une des Hautes Parties Contractantes pourra déclarer à l'autre son intention de la faire cesser; et elle cessera en effet à l'expiration des six mois qui suivront cette déclaration.

ARTICLE V.

La présente Convention sera ratifiée, et les ratifications seront échangées à Londres à l'expiration de trois semaines à partir de sa date, ou plus tôt si faire si peut.

En foi de quoi les Plénipotentiaires re-

potentiaries have signed the same, and have affixed thereto the seals of their arms.

Done at London, the 13th day of February, in the year of our Lord 1843.

(L.S.) ABERDEEN.

(L.S.) STE. AULAIRE.

spectifs l'ont signée, et y ont apposé les cachets de leurs armes.

Fait à Londres, le 13 Février, l'an de grâce 1843.

(L.S.) ABERDEEN.

(L.S.) STE. AULAIRE.

Act of the British Parliament "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. 75.—August 22, 1843.

WHEREAS by a Convention between Her Majesty and the King of the French, signed at London on the 13th day of February, in the year 1843,* the ratifications whereof were exchanged at London on the 13th day of March in the same year, it was agreed, "that the High Contracting Parties should, on requisition made in their name through the medium of their respective Diplomatic Agents, deliver up to justice persons who, being accused of the crimes of murder (comprehending the crimes designated in the French Penal Code by the terms assassination, parricide, infanticide, and poisoning), or of an attempt to commit murder, or of forgery, or of fraudulent bankruptcy, committed within the jurisdiction of the requiring party, should seek an asylum, or should be found within the territories of the other, provided that this should be done only when the commission of the crime should be so established as that the laws of the country where the fugitive or person so accused should be found would justify his apprehension and commitment for trial if the crime had been there committed;" and it is by the said Convention further stipulated, "that on the part of the British Government the surrender should be made only on the report of a Judge or Magistrate duly authorized to take cognizance of the acts charged against the fugitive in the warrant of arrest, or other equivalent judicial document, issued by a Judge or competent Magistrate in France, and likewise clearly setting forth the said acts;" and it is by the said Convention further stipulated and agreed, "that the expenses of any detention and surrender made in virtue of the stipulations hereinbefore recited should be borne and defrayed by the Government in whose name the requisition should have been made;" and it is by the said Convention further stipulated and agreed, "that the provisions of the said Convention should not apply in any manner to crimes of murder, forgery, or fraudulent bankruptcy committed antecedently to the date thereof;" and it is by the said Convention further stipulated and agreed, "that the said Convention should be in force until after the 1st day of January in the year 1844, after which date either of the High Contracting Parties should be at liberty to give notice to the other of its intention to put an end to it, and it should altogether cease and determine at the expiration of six months from the date of such notice;" and whereas it is expedient that provision should be made for carrying the said Convention into effect: be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that in case requisition be duly made, pursuant to the said Convention, in the name of His Majesty the King of the French, by his Ambassador or other accredited Diplomatic Agent, to deliver up to justice any person who, being accused of having committed, after the ratification of the said Convention, the crime of murder (comprehending the crimes designated in the French Penal Code by the terms assassination, parricide, infanticide, and poisoning), or of an attempt to commit murder, or of forgery, or of fraudulent bankruptcy, within the territories and jurisdiction of His said Majesty the King of the French, shall be found within the dominions of Her Majesty, it shall be lawful for one of Her Majesty's Principal Secretaries of State, or in Ireland for the Chief Secretary of the Lord Lieutenant of Ireland, and in any of Her Majesty's Colonies or possessions abroad for the officer administering the Government of any such Colony or possession, by warrant under his hand and seal, to signify that such requisition has been so made, and to require all Justices of the Peace and other Magistrates and officers of justice within their several jurisdictions to govern themselves accordingly, and to aid in apprehending the person so accused and committing such person to gaol, for the purpose of being delivered up to justice, according to the provisions of the said Convention, and thereupon it shall be lawful for any Justice of the Peace, or other person having power to commit for trial persons accused of crimes against the laws of that part of Her Majesty's dominions in

* See page 31.

which such supposed offender shall be found, to examine upon oath any person or persons touching the truth of such charge, and upon such evidence as, according to the laws of that part of Her Majesty's dominions, would justify the apprehension and committal for trial of the person so accused, if the crime of which he or she shall be so accused had been there committed, it shall be lawful for such Justice of the Peace, or other person having power to commit as aforesaid, to issue his warrant for the apprehension of such person, and also to commit the person so accused to gaol, there to remain until delivered pursuant to such requisition as aforesaid.

II. Provided always, and be it enacted, that in every such case copies of the depositions upon which the original warrant was granted, certified under the hand of the person or persons issuing such warrant, and attested upon the oath of the party producing them to be true copies of the original depositions, may be received in evidence of the criminality of the person apprehended.

III. And be it enacted, that it shall be lawful for one of Her Majesty's Principal Secretaries of State, or in Ireland for the Chief Secretary of the Lord Lieutenant of Ireland, and in any of Her Majesty's Colonies or possessions abroad for the officer administering the Government of any such Colony or possession, by warrant under his hand and seal, to order the person so committed to be delivered up to such person or persons as shall be duly authorized in the name of the said King of the French to receive the person so committed, and convey such person to the dominions of the said King of the French, to be tried for the crime of which such person shall be so accused, and such person shall be delivered up accordingly; and it shall be lawful for the person or persons authorized as aforesaid to receive the person so charged with crime and committed as aforesaid, to hold such person in custody, and take him or her to the dominions of the King of the French, pursuant to the said Convention; and if the person so accused shall escape out of any custody to which he or she shall be committed, or to which he or she shall be delivered as aforesaid, it shall be lawful to retake such person, in the same manner as any person accused of any crime against the laws of that part of Her Majesty's dominions to which he or she shall so escape may be retaken upon an escape: provided always, that no Justice of the Peace or other person shall issue his warrant for the apprehension of any such supposed offender until it shall have been proved to him, upon oath or by affidavit, that the party applying for such warrant is 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, or unless it shall appear to him that the acts charged against the supposed offender are clearly set forth in such warrant of arrest or other equivalent judicial document.

IV. And be it enacted, that where any person who shall have been committed under this Act, to remain until delivered up pursuant to requisition as aforesaid, shall not be delivered up pursuant thereto, and conveyed out of Her Majesty's dominions, within two calendar months after such committal, over and above the time actually required for conveying the prisoner from the gaol to which he or she was committed by the readiest way out of Her Majesty's dominions, it shall in every such case be lawful for any of Her Majesty's Judges, in that part of Her Majesty's dominions in which such supposed offender shall be in custody, upon application made to him or them by or on behalf of the person so committed, and upon proof made to him or them that reasonable notice of the intention to make such application has been given to some or one of Her Majesty's Principal Secretaries of State in Great Britain, or in Ireland to the Chief Secretary of the Lord Lieutenant of Ireland, and in any of Her Majesty's Colonies or possessions abroad for the officer administering the Government of any such Colony or possession, to order the person so committed to be discharged out of custody, unless sufficient cause shall be shown to such Judge or Judges why such discharge ought not to be ordered.

V. And be it enacted, that if, by any law or ordinance to be hereafter made by the Local Legislature of any British Colony or possession abroad, provision shall be made for carrying into complete effect within such Colony or possession the objects of this present Act by the substitution of some other enactment in lieu thereof, then it shall be competent to Her Majesty, with the advice of Her Privy Council (if to Her Majesty in Council it shall seem meet, but not otherwise), to suspend the operation within any such Colony or possession of this present Act so long as such substituted enactment shall continue in force there, and no longer.

VI. And be it enacted, that this Act shall continue in force during the continuance of the said Convention.

8 & 9 Vict., cap. 120.

An Act for facilitating Execution of the Treaties with France and the United States of America for the Apprehension of certain Offenders.

[August 8, 1845.]

WHEREAS two Acts were passed in the seventh year of the reign of Her Majesty, severally intituled "An Act for giving Effect to a Convention between Her Majesty and the King of the French for the Apprehension of certain Offenders," and "An Act for giving Effect to a Treaty between Her Majesty and the United States of America for the Apprehension of certain Offenders;" and it is expedient to make provision for giving more immediate effect to the warrant of any one of Her Majesty's Principal Secretaries of State for the better execution of the said Convention and Treaty respectively: Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons, in this present Parliament assembled, and by the authority of the same, that any police magistrate of the metropolis, to whom any one of Her Majesty's Principal Secretaries of State shall have signified, by warrant under his hand and seal, that requisition has been made pursuant to the said Convention or Treaty respectively, to deliver up to justice, in terms of the said Convention or Treaty, as the case may be, any person accused of any crime rendering him liable to be so delivered up under either of the recited Acts, shall, upon such evidence as according to the laws of England would justify the apprehension of the person so accused if the crime of which he is accused had been committed in England within the jurisdiction of such magistrate, issue his warrant for the apprehension of such person, in the form annexed to this Act, or to the like effect; and such warrant may be executed in any part of England, and shall have the same force and effect throughout England as if the same had been originally issued or subsequently endorsed by a Justice of the Peace or magistrate having jurisdiction in the place where the same shall be executed, and may be lawfully executed anywhere within England by the constable or constables to whom the same shall be directed, or who shall be appointed to execute the same, who shall severally have all the powers and privileges for the execution of such warrant as any constable duly appointed hath or may have within his constablewick.

6 & 7 Vict., c. 75.
6 & 7 Vict., c. 76.

Any Metropolitan Police Magistrate to whom it shall have been signified that a requisition has been made to deliver up any person pursuant to the said Convention or Treaty, may issue his warrant for the apprehension of such person in any part of England.

II. And be it enacted, that every person who shall be apprehended under any such warrant shall be brought with all convenient speed before the magistrate by whom such warrant shall have been issued, or some other magistrate of the same Police Court, and that such magistrate may cause the warrant of committal of such person to be drawn up according to the form given in the Schedule annexed to this Act, or to the like effect, which shall be good and sufficient in law to warrant the persons to whom the same shall be directed to detain such person in custody, as directed in the said warrant, until delivered pursuant to the Act under which he shall have been apprehended.

Such person when apprehended to be brought before a police magistrate, who may order his committal.

III. And be it enacted, that this Act shall be construed with each of the said Acts separately, and as if this Act had been enacted in each of the said Acts.

Act to be construed with recited Acts.

IV. And be it enacted, that this Act may be amended or repealed by any Act to be passed in this session of Parliament.

Alteration of Act.

SCHEDULE to which this Act refers.

Warrant of Apprehension.

Metropolitan Police District, to wit.

To all and each of the Constables of the Metropolitan Police Force.

WHEREAS the Right Honourable one of Her Majesty's Principal Secretaries of State, by warrant under his hand and Seal, hath signified to me, that pursuant to the [Convention made between Her Majesty and the King of the French in the year one thousand eight hundred and forty-three, or the Treaty made between Her Majesty and the United States of America, in the year one thousand eight hundred and forty-two, as the case may be], for the apprehension of certain offenders, requisition hath been duly made to him for delivering up to justice A.B., late of who is charged with having committed the crime of [here specify the offence], within the jurisdiction of [His Majesty the King of the French, or the United States of America, as the case may be].

This is therefore to command you, in Her Majesty's name, forthwith to apprehend

the said *A. B.*, pursuant to an Act passed in the ninth year of the reign of Her Majesty, intituled [*here insert the title of this Act*], wherever he may be found in England, and bring him before me, or some other magistrate sitting in this Court, to answer unto the said charge, for which this shall be your warrant.

Given under my hand and seal at _____, one of the Police Courts of the metropolis, this _____ day of _____, in the year of our Lord _____ J. P. (L.S.)

Warrant of Committal.

Metropolitan Police District, to wit.

To *A. B.*, one of the constables of the Metropolitan Police Force, and to the Keeper of the _____ at _____.

Be it remembered, that on the _____ day of _____, in the year of our Lord _____, *A. B.*, late of _____, is brought before me, *J. P.*, one of the police magistrates of the metropolis, sitting at the Police Court in _____, within the metropolitan police district, and is charged before me, for that he the said *A. B.*, on the _____ day of _____ at _____ within the jurisdiction of [His Majesty the King of the French, or the United States of America, as the case may be], did [*here state the offence*]: And forasmuch as it hath been shown to me, upon such evidence as by law is sufficient to justify the committal to gaol of the said *A. B.*, pursuant to an Act passed in the seventh year of the Reign of Queen Victoria, intituled [*here insert the title of the sixth and seventh Victoria, chapter seventy-five, or sixth and seventh Victoria, chapter seventy-six, as the case may require*], that the said *A. B.* is guilty of the said offence:

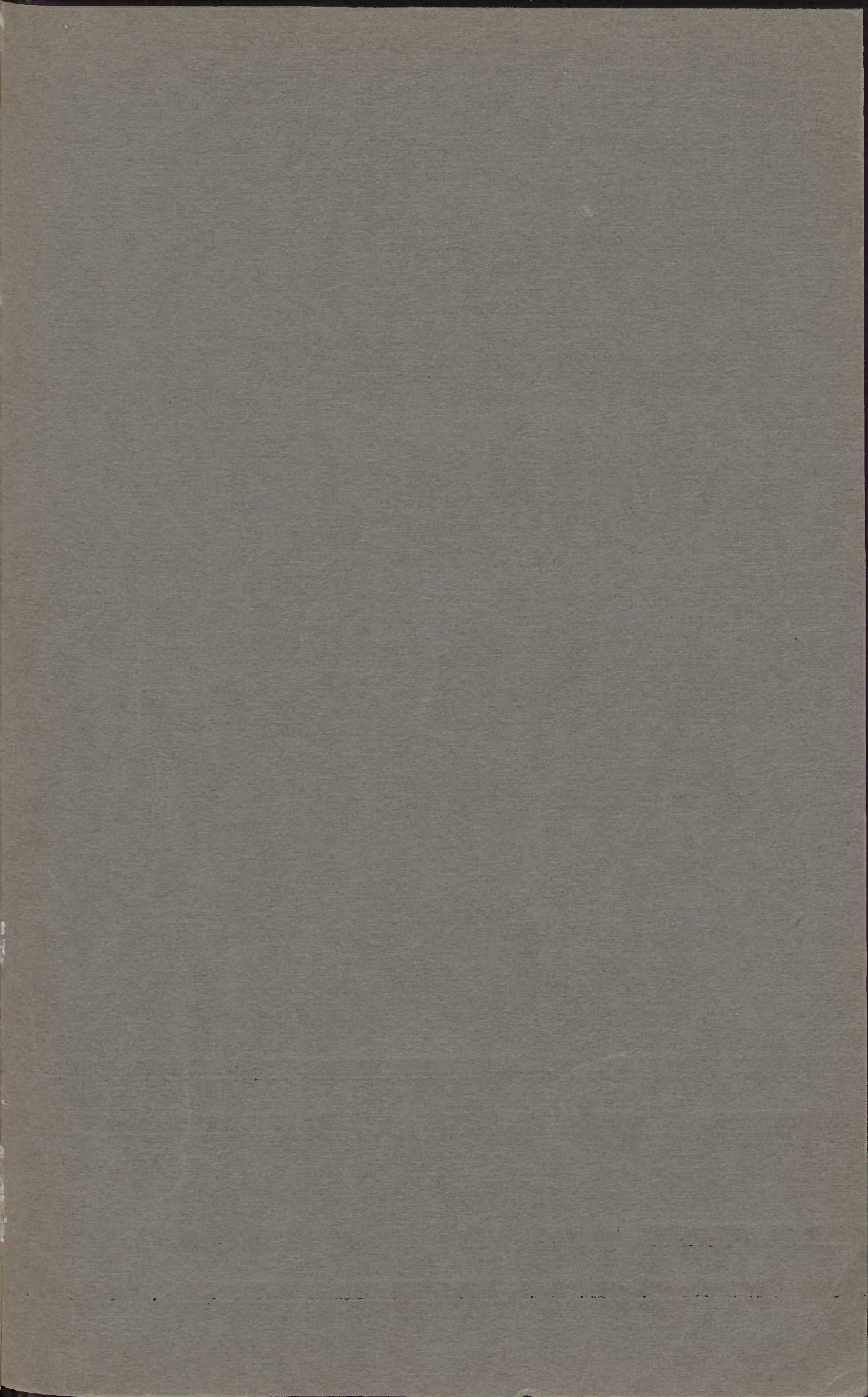
This is therefore to command you, the said constable, in Her Majesty's name forthwith, to convey and deliver the body of the said *A. B.* into the custody of the said keeper of the _____ at _____; and you the said keeper to receive the said *A. B.* into your custody in the same _____ and him there safely to keep until he shall be thence delivered pursuant to the provisions of the said Act; for which this shall be your warrant.

Given under my hand and seal at _____ one of the Police Courts of the metropolis, this _____ day of _____ in the year of our Lord _____ J. P. (L.S.)

Correspondence respecting the Extra-
dition Treaty with France.

*Presented to both Houses of Parliament by Com-
mand of Her Majesty. 1866.*

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