

Sub-Enclosure to Enclosure in No. 15.

(A.)

MINUTE by the ATTORNEY-GENERAL.

THE Treaty entered into between Great Britain and the German Empire for Extradition of Criminals, provides that the Treaty shall apply to the Colonies, and in such cases—

1. The "requisition" shall be by *Chief Consular Officer* of the German Empire in the Colony to the Governor of the Colony.
2. The requisition is to be "disposed of" subject to terms of Treaty (as nearly as may be) by the Governor.

NOTE.—Nothing is said as to what is meant by the term "disposed of."

The terms of Treaty, amongst other things, provide that if requisition is in accordance with terms of Treaty, "*the competent authorities*" are to arrest, and the prisoner when arrested is to be brought before a "*competent Magistrate*," who is to examine him, and to conduct the preliminary investigation of the case as if arrested for a crime committed in the country in which arrested.

There would have been but little doubt or difficulty in carrying out the terms of this treaty, but for what appears to me to have been an error in the *Extradition Act* of 1870. This Act is one which may, by Order in Council, be made to apply to any Extradition Treaty. An Order in Council applies the Act to this Treaty from 8th July last.

The Act, amongst other things, provides—(1.) That as to Colonies, the requisition may be by Consul-General, Consul, or Vice-Consul (so far the Act extends the Treaty which limited the power of requisition to the Chief Consular Officer). (2.) That as to Colonies, no warrant of a Secretary of State shall be required; that all powers by the Act vested in, or acts by the Act authorized or required to be done by the *Secretary of State and Police Magistrate*, or either of them, may be done by Governor alone.

On referring to the Act, it will be found that the powers vested in the Secretary of State and Police Magistrate respectively are as follows:—

NOTE.—No powers are vested in or to be exercised by them jointly.

- (1.) Secretary of State, on receipt of requisition duly made, may, after satisfying himself that the case is one within the Treaty, issue order to a Police Magistrate, directing such Police Magistrate to issue his warrant to arrest the fugitive criminal.

NOTE.—"Police Magistrate" means metropolitan Police Magistrate.

- (2.) On receipt of this order the Magistrate receives evidence, and if he thinks the evidence such as would justify the issue of a warrant if the crime were committed in the place where the arrest is made, he issues his warrant of arrest.
- (3.) On the criminal being brought before the Magistrate, the case is to be heard in like manner as near as may be as if prisoner were brought before him for an indictable offence committed in England.
- (4.) If the evidence be sufficient, the Magistrate commits the criminal to prison; if not, discharges him. If the criminal is committed, this is reported to the Secretary of State.
- (5.) After lapse of fifteen days (allowed so as to enable proceedings by *habeas corpus*, to test validity of proceedings), the warrant of extradition is issued by the Secretary of State, and under that warrant the criminal is handed over to some person authorized by the requisitioning party to receive him.

The term "Police Magistrate," where used in the proceedings before referred to, means a metropolitan Police Magistrate.

These proceedings may be varied as follows:—The requisitioning party may, before and without getting order from Secretary of State, go before a Police Magistrate or any Justice of the Peace *in any part of the United Kingdom*, and lay information, &c.; and thereupon the Police Magistrate or Justice of the Peace may issue warrant for arrest. The Magistrate or Justice is to send report to Secretary of State.

When prisoner is arrested, he is brought before the Police Magistrate or any Justice of the Peace, in any part of the United Kingdom, who must issue warrant for taking prisoner before the Police Magistrate—that is, a metropolitan Police Magistrate. He is then to be brought before the Police Magistrate; but unless the Secretary of State notifies to him, by order, that he has received a requisition, he is to discharge the criminal. After that, the proceeding continues as in the case of an arrest under a warrant issued by order of a Secretary of State.

This proceeding is valuable, because it enables a criminal to be arrested in any part of England forthwith, and brought before a Justice, who then sends him up to London; and it is to be regretted that the provision should not be applicable to the Colonies. However, it is not, as no provision is made for the performance by a Colonial Justice of the Peace of the duty devolving on a Justice of Peace in any part of United Kingdom.

Now, returning to the provisions applying the Act to the Colony, it would appear that the Governor, having the powers both of Secretary of State and Police Magistrate, has to issue to himself an order for issue of warrant of arrest. Then he is to issue warrant of arrest after inquiry; and then, on the criminal being brought before him, he is to inquire, and, if satisfied, to commit to prison; then he is to report this to himself, and thereupon, after lapse of fifteen days, may issue warrant of extradition.

I was surprised to find that the Imperial Act had vested the Police Magistrate's functions in the Governor, and on referring to the debate in *Hansard*, I find in the Attorney-General's speech, in introducing the Bill, he mentions on this head only that the powers of Secretary of State had been vested in the Governor: he does not notice that the functions of Police Magistrate were also vested in him. I am disposed to think that this provision in the Act was not intended; however, the language of the Act is incapable of any other construction.