

In passing, it may be noticed that the whole provision is loosely worded; for, though it provides that all powers, &c., vested in the Secretary of State and Police Magistrate, or either of them, it will be found, on reference to the Act, that no powers or acts are to be exercised or done jointly, but each has distinct powers and duties.

I am of opinion that this matter ought to be brought to the attention of the Secretary of State for the Colonies, with a view to an alteration of the law providing—

- (1.) That the Secretary of State's duties only should be vested in the Governor.
- (2.) That in a Colony "Police Magistrate" should mean any Stipendiary Magistrate at the metropolis or seat of Government, or some such provision, or leave the Governor in Council to fix what Stipendiary Magistrates shall be deemed Police Magistrates for the purposes of the Act.
- (3.) Justice of the Peace, to mean any Justice of the Peace in any part of the Colony.

With regard to the matter now under consideration, I think that the Governor should satisfy himself that the requisition complies with the provisions of the Treaty and the Act; that the warrant and depositions are duly authenticated; that the offence therein charged against the fugitive comes under some one of the heads of crimes within the Treaty; then (though this seems somewhat idle) that he should issue an order to himself to issue a warrant for arrest; the order may be as nearly as may be in the form given in the Schedule to the Act; then that the party requiring the arrest should attend before him, with his proofs, and if satisfied that there is such evidence as would justify a Magistrate in issuing a warrant for arrest in the case of an indictable offence committed here, he should issue his warrant as nearly as may be in the form given in the Schedule to the Act; no doubt the Consul will be represented by some member of the legal profession. When the fugitive is brought before him, the Governor should conduct the case in a manner similar to that in which a Magistrate would conduct a preliminary investigation of an indictable offence, except that the depositions, if received from Berlin, may, if duly authenticated, be received in evidence. The Governor will no doubt require evidence of identity. If satisfied with the evidence, he may commit to Wellington Gaol, and fifteen days after issue warrant of surrender, if in meantime the fugitive has not been discharged under proceedings by *habeas corpus*.

I have not yet received the evidence; when I have, I will state whether, in my opinion, the documents are duly authenticated, and whether the offence charged is within the Treaty.

I need hardly observe that the Governor of a Colony ought not to be placed in such a position as that which appears to be forced upon him by the Act above referred to. No doubt judicial duties have in some cases been imposed on Governors. This has not, I think, been approved of, even in such matters as the removal of a Judge or other high officer: but in the present instance, the Governor, acting as a Police Magistrate, is placed in the position of a subordinate quasi-judicial functionary, liable to have his proceedings over-ruled by the Supreme Court on *habeas corpus*.

JAMES PRENDERGAST,  
Attorney-General.

31st October, 1872.

B.

To the RESIDENT MAGISTRATE at Wellington, in the Province of Wellington, and Colony of New Zealand.

WHEREAS in pursuance of an arrangement with Her Majesty and the Emperor of Germany, referred to in an Order of Her Majesty in Council dated the twenty-fifth day of June, one thousand eight hundred and seventy-two, a requisition has been made to me Sir George Ferguson Bowen, the Governor of New Zealand, by Henry Houghton, the Consul at Dunedin of the Emperor of Germany, for the surrender of Bernhard August Ludwig Schreiber, late of Berlin, in Germany, accused of the commission of the crime of being a fraudulent bankrupt, and of concealing and making away with certain property, and of intentionally trying to prejudice his creditors within the jurisdiction of the German Empire: Now, I hereby, by this my order under my hand and seal, signify to you that such requisition has been made, and require you to issue your warrant for the apprehension of such fugitive, provided that the conditions of "The Extradition Act, 1870," relating to the issue of such warrant, are in your judgment complied with.

Given under the hand and seal of the undersigned, the Governor of New Zealand, at Wellington aforesaid, this fifth day of November, one thousand eight hundred and seventy-two.

(Seal.)

G. F. BOWEN.

C.

SIR,—

R.M. Court, Wellington, 5th November, 1872.

In the matter of the extradition of B. A. L. Schreiber, this day argued before me, and after considering the argument, particularly with regard to subsection 2, clause 17, of "The Extradition Act, 1870," I have come to the conclusion that I have no authority to act under the order received from you this day; but upon the sworn information of Mr. F. A. Krull, Consul for the German Empire, I have issued a warrant under my hand ordering the before-mentioned B. A. L. Schreiber, when arrested, to be brought before your Excellency.

I have not time to-day to make an official report, but the information and other papers will be forwarded to you to-morrow.

His Excellency Sir G. F. Bowen, G.C.M.G.,  
Governor and Commander-in-Chief.

I have, &c.,  
JAMES C. CRAWFORD, R.M.