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GOVERNMENT NOTIFICATION.

The following Copy of an Order of Her Majesty in Council, of the 20th November, 1873, for carrying into effect a Treaty between Her Majesty and the Emperor of Brazil for the mutual surrender of fugitive Criminals, is published for general information.

By Command,

J. GARDINER AUSTIN,
Colonial Secretary.

Colonial Secretary's Office, Hongkong, 9th February, 1874.

At the Court at *Balmoral*, the 20th Day of *November*, 1873.

PRESENT,

The QUEEN'S Most Excellent Majesty in Council.

WHEREAS by an Act of Parliament made and passed in the Session of Parliament holden in the thirty-third and thirty-fourth years of the reign of Her present Majesty, intituled "An Act for amending the law relating to the Extradition of Criminals," it was amongst other things enacted, that where an arrangement has been made with any foreign State with respect to the surrender to such State of any fugitive criminals, Her Majesty may, by Order in Council, direct that the said Act shall apply in the case of such foreign State; and that Her Majesty may, by the same or any subsequent Order, limit the operation of the Order, and restrict the same to fugitive criminals who are in or suspected of being in the part of Her Majesty's dominions specified in the Order, and render the operation thereof subject to such conditions, exceptions, and qualifications as may be deemed expedient:

And whereas a Treaty was concluded on the thirteenth day of November, one thousand eight hundred and seventy-two, between Her Majesty and the Emperor of Brazil for the Mutual Extradition of Fugitive Criminals, which Treaty is in the terms following:—

HER Majesty the Queen of the United Kingdom of Great Britain and Ireland, and His Majesty the Emperor of Brazil, 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 accused, or convicted, of the crimes hereinafter enumerated, being fugitives from justice, should under certain circumstances be reciprocally delivered up, have resolved to name their Plenipotentiaries for the celebration of a Treaty for this purpose, that is to say:

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, George Buckley Mathew, Esquire, Companion of the Most Honourable Order of the Bath, Her Envoy Extraordinary and Minister Plenipotentiary to His Majesty the Emperor of Brazil;

And His Majesty the Emperor of Brazil, the Marquis of S. Vicente, a Counsellor of State, Dignitary of the Order of the Rose, Senator and Grandee of the Empire;

SUA Magestade a Rainha do Reino Unido da Grã Bretanha e Irlanda, e Sua Magestade o Imperador do Brazil, julgando conveniente, com o fim de melhorar a administração da justiça e prevenir o crime dentro de seus respectivos territorios e jurisdicções, que as pessoas accusadas ou convictas dos crimes abaixo enumerados, refugiadas do alcance da justiça, sejam reciprocamente entregues, mediante certas circunstancias, resolverão nomear seus Plenipotenciarios para a celebração de um Tratado com esse objecto, a saber:—

Sua Magestade a Rainha do Reino Unido da Grã Bretanha e Irlanda, o Senhor George Buckley Mathew, Cavalleiro da muito honrada Ordem do Banho, Seu Enviado Extraordinario e Ministro Plenipotenciario junto de Sua Magestade o Imperador do Brazil;

E Sua Magestade o Imperador do Brazil, o Marquez de S. Vicente, Conselheiro d'Estado, Dignitario da Ordem da Rosa, Senador e Grande do Imperio;

Who, 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.

The High Contracting Parties engage to deliver up, reciprocally, those persons who, being accused or convicted of having committed crime in the territory of the one Party, shall be found within the territory of the other, under the circumstances and conditions that are laid down in the present Treaty.

ARTICLE II.

The crimes for which the extradition shall be granted are the following:—

1. Murder, or attempt to murder.
2. Manslaughter.
3. Illegal fabrication, counterfeiting, or falsification, uttering or bringing into circulation counterfeit or falsified money.
4. Forgery, or imitation, counterfeiting or falsification, of any document or paper (comprising the crimes designated in the criminal code of Brazil as imitation, counterfeiting, or falsification of paper money, notes of banks, or other securities public or private, as well as the intentional use or the bringing into circulation of any papers imitated, counterfeited, or falsified.
5. The purloining, or embezzlement, of moneys or effects, public or private, by abuse of confidence.
6. Frauds, or false or fraudulent pretences, to obtain moneys or effects from another.
7. Bankruptcies subject to criminal prosecution, according to the laws applicable thereunto.
8. Malversation, or fraud, committed by a bailie, banker, agent, factor, trustee, or director, or member, or officer, of any Company, made criminal by any law in force.
9. Rape, by force or threats.
10. Abduction.
11. Child-stealing.
12. House-breaking, with intent to steal, or to commit other crimes.
13. Crimes resulting from the act of wilfully setting fire to a house, or to buildings connected therewith, to the prejudice of another.
14. Robbery with violence.
15. Piracy according to the law of nations.
16. Sinking or destroying a vessel on the high seas, or the attempt to perpetrate such acts.
17. Crimes arising from assault on board a ship on the high seas, with intent to cause death, or grievous bodily injuries.
18. Crimes arising from the revolt of two or more persons on board a ship on the high seas, against the authority of the captain.
19. Extradition will also take place for participation in any of the above-named crimes, provided that such participation shall be punishable by the laws of both the States of the High Contracting Powers.

Os quaes, depois de terem communicado seus respectivos plenos poderes, achados em bôa e devida fôrma, ajustarão e accordarão nos seguintes Artigos:—

ARTIGO I.

As Altas Partes Contractantes se obrigão a entregar reciprocamente os individuos que sendo accusados ou convictos de ter commettido crime no territorio de uma dellas, forem encontrados no territorio da outra, mediante as circumstancias e condições que são estabelecidas no presente Tractado.

ARTIGO II.

Os crimes pelos quaes se deverá conceder a extradicação são os seguintes:—

1. Homicidio sujeito á pena de morte (“murder”), e tentativa d’elle.
2. Homicidio (“manslaughter”).
3. Fabricação illegal, contrafacção ou falsificação de moeda, emitir ou introduzir na circulação moeda contrafeita ou falsificada.
4. O crime de falsidade, ou imitação, contrafacção, ou falsificação de qualquer documento ou papel, comprehendendo-se os crimes designados na lei criminal do Brazil, de imitação, contrafacção, ou falsificação do papel moeda, notas dos bancos, ou outros titulos publicos ou particulares; assim como o uso premeditado ou introdução na circulação de quaesquer papeis imitados contrafeitos ou falsificados.
5. Subtracção, ou extravio, de dinheiros ou valores publicos ou particulares, com abuso da confiança.
6. Artificios, ou pretextos falsos ou fraudulentos, para aquisição de dinheiros ou valores de outrem.
7. Crimes de banca rota sujeitos ao processo criminal na forma das leis que lhes são applicaveis.
8. Malversação ou fraude commettida por depositario, banqueiro, agente, corretor, curador, director, membro, ou empregado de alguma companhia, considerada crime por lei em vigor.
9. Defloração ou violação (“rape”) por violencia ou ameaças.
10. Rapto violento.
11. Subtracção de criança.
12. Arrombamento de caza com o fim de roubar ou para commetter outro crime.
13. Crimes resultantes do incendio voluntario de uma caza, ou de edificios connexos com ella, em prejuizo de outrem.
14. Roubo.
15. Pirataria segundo o direito das gentes.
16. Destruição de navio no alto mar, ou facto de mettel-o a pique, ou tentativa de taes actos.
17. Crimes resultantes de assalto a bordo de um navio no alto mar, com intenção de causar a morte, ou graves offensas physicas.
18. Crimes resultantes da revolta por duas ou mais pessoas de bordo de um navio em alto mar contra a auctoridade do capitão.
19. A extradicação terá tambem logar por cumplicidade em algum dos crimes acima declarados, uma vez que tal cumplicidade seja punivel pelas leis de ambos os Estados das Altas Partes Contractantes.

ARTICLE III.

No British subject shall be delivered up by the Government or authorities of the United Kingdom to the Government or authorities of the Empire; and in like manner no Brazilian subject shall be delivered up by the Government or authorities of the Empire to the Government or authorities of the United Kingdom.

If, however, the person who has taken refuge in the territory of the other High Contracting Party shall have become naturalized there after the perpetration of the crime, such naturalization shall not be an obstacle to his extradition according to the stipulations of this Treaty.

ARTICLE IV.

The extradition shall not take place if the person claimed has already been tried and acquitted, or punished, or if he is under trial, for the same crime for which extradition is asked. If he should be under trial for any other crime, his extradition shall be deferred until the conclusion of the trial, and the fulfilment of the punishment, when such may have been awarded.

ARTICLE V.

The extradition shall also not take place if, after the perpetration of the crime, or the institution of the penal prosecution, or the conviction thereon, the refugee shall have acquired exemption from prosecution, or punishment, by lapse of time, according to the laws of the State appealed to.

ARTICLE VI.

The person claimed shall not be delivered up for crimes of a political character, and when he shall have been delivered up on other grounds he shall not be punished for anterior political crimes. He shall not, moreover, be delivered up if he can clearly prove that the requisition is made with the object of trying him, or of punishing him, for a political crime.

ARTICLE VII.

A person surrendered cannot be kept in prison, or brought to trial, in the State to which the surrender is made for any other crime, or on account of any other matters, than those for which the extradition has been granted. This statement is not applicable to crimes committed after the extradition.

ARTICLE VIII.

If the person whose extradition is demanded by one of the High Contracting Parties shall be also claimed by one or more other Governments, on account of crimes committed in their respective territories, the following rule shall be observed:

If he shall be a subject of the High Contracting Party who claims him, the surrender shall be made to it. If he be not so, the other High Contracting Party shall have the power of delivering him up to the reclaiming Government which in the case in question may appear to the former best entitled to the preference.

ARTIGO III.

Nem um subdito Britannico será entregue pelo Governo ou auctoridades do Reino Unido ao Governo ou auctoridades do Imperio; e semelhantemente nem um subdito Brasileiro será entregue pelo Governo ou auctoridades do Imperio ao Governo ou auctoridades do Reino Unido.

Entretanto se o refugiado no territorio da outra Alta Parte Contractante ahi se tivesse naturalizado depois da perpetração do crime, tal naturalização não servirá de obstaculo a extradição segundo as estipulações deste Tractado.

ARTIGO IV.

A extradição não terá logar se o individuo reclamado já tiver sido processado, e absolvido, ou punido, ou se estiver sendo processado, pelo mesmo crime pelo qual se pede a extradição. Se estiver sendo processado por outro qualquer crime, a sua extradição será demorada até a conclusão do processo, e cumprimento da pena, quando lhe tenha sido imposta.

ARTIGO V.

A extradição não terá tambem logar, se depois da perpetração do crime, ou da instauração do processo criminal, ou da sentença condemnatoria, tiver o refugiado adquerido, por meio da prescripção, segundo as leis do paiz ao qual se fez o pedido, a isenção da accusação ou da punição.

ARTIGO VI.

O reclamado não será entregue por crimes de caracter politico, e quando for entregue por outros fundamentos não poderá ser punido por crimes politicos anteriores. Não será tambem entregue se elle evidentemente provar que a requisição é feita com o fim de processal-o ou punil-o por crime politico.

ARTIGO VII.

O individuo entregue não poderá ser conservado preso ou submettido a processo no Estado ao qual se fez a entrega por outro crime, ou em virtude de outras causas que não sejam aquellas pelas quaes se concedeo a extradição. Esta estipulação não é applicavel aos crimes commettidos depois da extradição.

ARTIGO VIII.

Se o individuo cuja extradição uma das Altas Partes Contractantes pedir, for igualmente reclamado por outro ou outros Governos, em consequencia de crimes commettidos nos seus respectivos territorios, observar-se ha o seguinte:

Se for subdito da Alta Parte Contractante que o reclamar, a entrega será feita á ella. Se não for, a outra Alta Parte Contractante terá a faculdade de entregal-o ao Governo reclamante que no caso dado lhe pareça que deve ter a preferencia.

ARTICLE IX.

A requisition for extradition shall be made through the respective Diplomatic Agents of the High Contracting Powers.

When it relates to a person accused only, it must be accompanied by the warrant of arrest, issued by the competent authority of the State applying for it, and by such evidence as according to the laws of the place where the accused is found, would justify the arrest if the crime was there committed.

If the extradition refers to a person already convicted, the application must be accompanied by a copy of the sentence of condemnation, passed against him, given by a competent Tribunal of the State making the requisition.

The requisition cannot, however, be founded on a sentence passed *in contumaciam*, that is to say, when the delinquent has not been personally cited to defend himself.

ARTICLE X.

If the requisition has been in conformity with the foregoing stipulations, the competent authorities of the State to which it has been addressed shall proceed to the capture of the refugee. The prisoner shall be brought before a competent authority, who is to examine him and conduct the preliminary investigations of the case just as if the apprehension had taken place for crime committed in the same country.

ARTICLE XI.

The extradition shall in no case take place before the expiration of fifteen days counted from the apprehension, and after that delay it shall only be carried out when the evidence has been found sufficient according to the laws of the country applied to, either for subjecting the prisoner to trial if the crime had been there committed, or to prove the identity of the person convicted and condemned by the Tribunals of the State making the requisition.

ARTICLE XII.

In the examinations which are to be made in conformity with the foregoing stipulations, the authorities of the State to which application is made, shall admit as valid evidence the sworn depositions or declarations of witnesses, which were taken in the other State, or the respective copies thereof as well as the judicial documents, warrants, or sentences, transmitted therefrom, provided they are signed or certified by the hand of the Judge, Magistrate, or public officer of that State, and authenticated, either by the oath of some witness, or by the official seal of the Minister of Justice or some other Minister of State.

ARTICLE XIII.

If within two months counting from the date of arrest, sufficient evidence for the extradition shall not have been presented, the person arrested shall be set at liberty. He shall likewise be set at liberty if, within two months of the day on which he was placed at the disposal of the Diplomatic Agent, he shall not have been sent off to the reclaiming country.

ARTIGO IX.

A requisição para a extradição será feita por intermedio dos respectivos Agentes Diplomaticos das Altas Partes Contractantes.

Se ella referir-se a um individuo sómente accusado, deverá ser acompanhada do mandado de prisão expedido pela auctoridade competente do Estado que a solicitar, e de provas que segundo as leis do logar onde o accusado for encontrado justificassem a captura quando o crime fosse ahi commettido.

Se a extradição referir-se a um individuo já sentenciado, o pedido deverá ser acompanhado do traslado da sentença condemnatoria expedida contra elle pelo Tribunal competente do Estado que fizer a requisição.

A reclamação não pode porem ser fundada em sentença proferida *in contumaciam*, isto é, quando o reo não for pessoalmente citado para defender-se.

ARTIGO X.

Se a requisição estiver de conformidade com as anteriores estipulações, a auctoridade competente do Estado a que ella se tiver dirigido procederá á captura do refugiado. O preso será levado á presença da auctoridade competente, que terá de examinal-o, e de dirigir as investigações preliminares do cazo como se a captura fosse effectuada por crime commettido no mesmo paiz.

ARTIGO XI.

A extradição nunca terá logar antes da expiração de 15 dias contados da captura, e depois d'esse prazo só se effectuará quando as provas forem julgadas sufficientes segundo as leis do paiz á que for pedida, ou seja para sujeitar o preso á processo se o crime fosse ahi commettido, ou seja para justificar a identidade da pessoa convicta e condemnada pelos tribunaes do Estado que fez a requisição.

ARTIGO XII.

Nos exames á que se tiver de proceder de conformidade com as precedentes estipulações as auctoridades do Estado, á que se fez o pedido, admittirão como provas os depoimentos sob juramento, ou as declarações, das testemunhas, que forão tomadas no outro Estado ou as respectivas copias, assim como os documentos judiciaes, mandados, ou sentenças, expedidos d'alli, com tanto que sejam assignados ou legalizados pela propria mão do juiz, magistrado ou empregado publico d'aquelle Estado, e authenticatedos ou por juramento de alguma testemunha ou com o sello official do Ministro da Justiça, ou de qualquer outro Ministro d'Estado.

ARTIGO XIII.

Se dentro de dous mezes contados da data da captura, não forem apresentadas provas sufficientes para que se realise a extradição, o preso será posto em liberdade. Tambem será posto em liberdade se, dentro de dous mezes contados do dia em que for declarado que está á disposição do Agente Diplomatico, este não o tiver remettido para o Estado reclamante.

ARTICLE XIV.

All the articles found in the possession of the person demanded, at the time of his apprehension, shall be seized in order to their delivery with him when his extradition shall take place.

This delivery shall not be limited to effects or articles robbed, stolen, or obtained by other crimes, but shall extend to all that might serve as evidence of the crime; it shall be made even when the extradition could not be made after orders to that effect, on account of the flight or death of the person claimed.

ARTICLE XV.

The High Contracting Parties renounce whatever claims they may have for the reimbursement of the expenses incurred for the apprehension and maintenance of the persons to be delivered up, and for their conveyance until they shall be placed on board ship, as they agree to defray these outgoings in their respective countries.

ARTICLE XVI.

The stipulations of the present Treaty shall apply to the colonies and other possessions of Her Britannic Majesty.

The requisition for the surrender shall be made to the Governor, or to the chief authority, in the Colony or Possession, by the highest Consular Agent of Brazil.

The surrender shall be made by the Governor or the chief authority, who shall, however, have the power either to make it, or to refer the matter to his Government.

Both in the requisitions and in the surrender, the conditions established by the foregoing Articles of this Treaty shall be, as far as may be possible, adhered to.

As Her Britannic Majesty has the power to adopt special arrangements in the Colonies and possessions, respecting the delivering up of delinquents, Her Majesty will facilitate the reclamations of Brazil in this respect, as far as may be possible, with due regard, however, to the provisions of this Treaty.

ARTICLE XVII.

The present Treaty shall come into force ten days after its publication, and in conformity with the forms prescribed by the laws of the countries of the High Contracting Parties. It will remain in force until one of these shall give notice for its termination, but it shall then remain in force for six months, counted from the day of this notification.

This Treaty shall be ratified, and the ratifications exchanged in Rio de Janeiro, within three months, or sooner if possible.

In witness whereof the respective Plenipotentiaries have signed the present Treaty, and have affixed thereto the seal of their arms.

Done at Rio de Janeiro, on the thirteenth day of the month of November, of the year of Our Lord Jesus Christ one thousand eight hundred and seventy-two.

(L.S.) GEORGE BUCKLEY MATHEW.

(L.S.) MARQUEZ DE S. VICENTE.

ARTIGO XIV.

Todos os objectos encontrados em poder do individuo reclamado, ao tempo da sua prisão, serão apprehendidos afim de serem entregues com o individuo quando se verifique sua extradição.

Essa entrega não se limitará ás propriedades ou artigos furtados, roubados, ou obtidos por outros crimes, mas se extenderá á tudo quanto possa servir para a prova do crime; ella terá logar ainda quando a extradição depois de ordenada não se possa verificar por fuga ou morte do individuo reclamado.

ARTIGO XV.

As Altas Partes Contractantes renuncião quaesquer reclamações que tenham por fim o reembolso das despesas feitas com a prisão e manutenção dos individuos que têm de ser entregues, e com a sua conducção até serem postos á bordo, por isso que concordão fazer essas despesas em seus paizes reciprocamente.

ARTIGO XVI.

As estipulações do presente Tractado serão applicaveis ás colonias e outras possessões de Sua Magestade Britannica.

A requisição para a entrega será feita ao Governador, ou á auctoridade principal, da colonia ou possessão, pelo respectivo Agente Consular mais graduado do Imperio do Brazil.

A entrega será feita pelo Governador ou auctoridade principal, a qual todavia terá faculdade de realisal-a, ou de submetter o assumpto ao seu Governo.

Tanto na requisição como na entrega, observar-se-ha, quanto possivel, as regras estabelecidas nos precedentes Artigos deste Tractado.

Como Sua Magestade Britannica tem a faculdade de adoptar disposições especiaes quanto ás colonias e possessões, em relação á entrega de delinquentes, Sua Magestade facilitará as reclamações do Brazil a semelhante respeito, quanto possivel, cingindo-se todavia as bases deste Tractado.

ARTIGO XVII.

O presente Tractado começará á vigorar dez dias depois de sua publicação, e de conformidade com as formulas prescriptas pelas leis dos Estados das Altas Partes Contractantes. Elle perdurará até que qualquer d'ellas denuncie a sua cessação, mas ainda então terá vigor por seis mezes contados do dia de tal notificação.

Este Tractado será ratificado, e as ratificações trocadas no Rio de Janeiro dentro de trez mezes, ou antes se for possivel.

Em testemunho do que os respectivos Plenipotenciarios assignarão o presente Tractado, e lhe pozerão o sello de suas armas.

Feito no Rio de Janeiro aos treze dias do mez de Novembro do anno de Nosso Senhor Jesus Christo de mil oitocentos e setenta e dois.

(L.S.) GEORGE BUCKLEY MATHEW.

(L.S.) MARQUEZ DE S. VICENTE.

The Undersigned, Plenipotentiaries of Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, and of His Majesty the Emperor of Brazil, charged with making a Treaty for the extradition of criminals, upon which they have at this present agreed, having met in conference, took into their consideration the following subjects:—

They directed their attention to the fact that the criminal law of England punishes the crime of infanticide with the same penalty as that of murder, when accompanied by corresponding circumstances, and that it results therefrom that extradition should take place even for attempting to commit that crime.

On the other hand, they observed, that according to the Brazilian law, infanticide is not punished as murder, nor even as manslaughter, but as a crime distinct from both, and by a minor punishment, and that consequently extradition should not take place for the attempt.

They consequently resolved to declare that extradition shall solely take place for the crime of infanticide, and not for an attempt to commit that crime.

With this declaration they agreed to close this conference, from which the present Protocol emanates, which being found in conformity, was signed, each having a copy thereof.

Done in the city of Rio de Janeiro, the thirteenth day of November of 1872.

(L.S.) GEORGE BUCKLEY MATHEW.
(L.S.) MARQUEZ DE S. VICENTE.

Reunidos em conferencia os Plenipotenciarios de Sua Magestade a Rainha do Reino Unido da Grã Bretanha e Irlanda, e de Sua Magestade o Imperador do Brazil, abaixo assignados, encarregados de ajustar um Tractado de extradição de delinquentes, em que nesta data accorderão, tomarão em consideração a seguinte materia:

Ponderou-se que a lei criminal Inglesa pune o crime de infanticidio com a mesma pena do crime de *murder*, quando acompanhado das circumstanças deste, e que dahi resulta ter lugar a extradição mesmo por tentativa.

Por outro lado ponderou-se que segundo a lei Brasileira, o infanticidio não é punido como o homicidio sujeito á pena de morte, nem mesmo como homicidio, sim como crime distincto d'elles, e com pena menor, e que consequentemente não deve ter lugar a extradição por tentativa.

Resolverão pois declarar que a extradição só poderá verificar-se pelo crime de infanticidio, e não pela tentativa d'elle.

Com esta declaração entenderão terminar esta conferencia, da qual se lavrou o presente Protocollo, que depois de achar-se conforme foi assignado, ficando cada um com o seu exemplar.

Feito na Corte do Rio de Janeiro aos treze dias de Novembro de 1872.

(L.S.) GEORGE BUCKLEY MATHEW.
(L.S.) MARQUEZ DE S. VICENTE.

And whereas the ratifications of the said Treaty were exchanged at Rio de Janeiro on the twenty-eighth day of August last:

Now, therefore, Her Majesty, by and with the advice of Her Privy Council, and in virtue of the authority committed to Her by the said recited Act, doth order, and it is hereby ordered, that from and after the first day of December, one thousand eight hundred and seventy-three, the said Act shall apply in the case of the said Treaty with the Emperor of Brazil.

Edmund Harrison.

No. 27.

GOVERNMENT NOTIFICATION.

The following Circular Despatch from The Right Honorable The Secretary of State for the Colonies, is published for general information.

By Command,

J. GARDINER AUSTIN,
Colonial Secretary.

Colonial Secretary's Office, Hongkong, 10th February, 1874.

CIRCULAR.

DOWNING STREET, 17th November, 1873.

SIR,—I transmit, for the information of the Colony under your Government, the accompanying copy of a Circular prepared by the Board of Trade, containing all the alterations and additions which have been made in the International Code of Signals Book since March, 1872.

I have the honor to be,

Sir,

Your most obedient humble Servant,

KIMBERLEY.

The Officer Administering the Government of
HONGKONG.