

GOVERNMENT NOTIFICATION.—No. 455.

The following Circular Despatch, with its enclosure, is published.

By Command,

T. SERCOMBE SMITH,
Acting Colonial Secretary.

Colonial Secretary's Office, Hongkong, 4th October, 1898.

CIRCULAR.

DOWNING STREET,
25th August, 1898.

SIR,—I have the honour to transmit to you, for publication in the Colony under your Government, a copy of an Order of Her Majesty the Queen in Council, dated the 9th of August, 1898, for giving effect to the Treaty between Her Majesty and the President of the Republic of Chile, for the mutual extradition of Fugitive criminals, signed at Santiago on the 26th of January, 1897, the ratifications of which were exchanged at Santiago on the 14th of April, 1898.

I have the honour to be,

Sir,

Your most obedient, humble Servant,

J. CHAMBERLAIN.

The Officer Administering the Government of
HONGKONG.

ORDER IN COUNCIL.

EXTRADITION TREATY.—REPUBLIC OF CHILE.

Osborne House, Isle of Wight, 9th August, 1898.

At the Court at *Osborne House, Isle of Wight*, the 9th day of August, 1898.

PRESENT,

The QUEEN's Most Excellent Majesty.

Lord Privy Seal.

Lord James of Hereford.

Sir Fleetwood Edwards.

WHEREAS by the Extradition Acts, 1870 to 1895, 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 Acts 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 twenty-sixth day of January, one thousand eight hundred and ninety-seven, between Her Majesty and the President of the Republic of Chile 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 Excellency the President of the Republic of Chile, having determined, by common consent, to conclude a Treaty for the extradition of criminals, have, accordingly, named as their Plenipotentiaries:—

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, John G. Kennedy, Esq., Minister Resident of Great Britain in Chile; and his Excellency the President of the Republic of Chile, Señor Don Carlos Morla Vicuña, Minister of Foreign Affairs; who, after having exhibited to each other their respective Full Powers, and found them in good and due form, have agreed upon the following Articles:—

ARTICLE I.

The High Contracting Parties engage to deliver up to each other, under certain circumstances and conditions stated in the present Treaty, those persons who, being accused or convicted of any of the crimes or offences enumerated in Article II, committed in the territory of the one Party, shall be found within the Territory of the other Party.

ARTICLE II.

Extradition shall be reciprocally granted for the following crimes or offences :—

1. Murder (including assassination, parricide, infanticide, poisoning), or attempt or conspiracy to murder.
2. Manslaughter.
3. Administering drugs or using instruments with intent to procure the miscarriage of women.
4. Rape.
5. Carnal knowledge or any attempt to have carnal knowledge of a girl under 14 years of age, if the evidence produced justifies committal for those crimes according to the laws of both the Contracting Parties.
6. Indecent assault.
7. Kidnapping and false imprisonment, child stealing.
8. Abduction.
9. Bigamy.
10. Maliciously wounding or inflicting grievous bodily harm.
11. Assault occasioning actual bodily harm.
12. Threats, by letter or otherwise, with intent to extort money or other things of value.
13. Perjury, or subornation of perjury.
14. Arson.
15. Burglary or house-breaking, robbery with violence, larceny, or embezzlement.
16. Fraud by a bailee, banker, agent, factor, trustee, director, member, or public officer of any Company, punishable with imprisonment for not less than one year by any law for the time being in force.
17. Obtaining money, valuable security, or goods by false pretences; receiving any money, valuable security, or other property, knowing the same to have been stolen or unlawfully obtained.
- 18.—(a.) Counterfeiting or altering money or bringing into circulation counterfeited or altered money.
- (b.) Knowingly making without lawful authority any instrument, tool, or engine adapted and intended for the counterfeiting of the coin of the realm.
- (c.) Forgery, or uttering what is forged.
19. Crimes against bankruptcy law.
20. Any malicious act done with intent to endanger the safety of any persons travelling or being upon a railway.
21. Malicious injury to property, if such offence be indictable.
22. Piracy and other crimes or offences committed at sea against persons or things which, according to the laws of the High Contracting Parties, are extradition offences, and are punishable by more than one year's imprisonment.
23. Dealing in slaves in such manner as to constitute a criminal offence against the laws of both States.

The extradition is also to be granted for participation in any of the aforesaid crimes, provided such participation be punishable by the laws of both Contracting Parties.

Extradition may also be granted at the discretion of the State applied to in respect of any other crime for which, according to the law of both the Contracting Parties for the time being in force, the grant can be made.

ARTICLE III.

Each party reserves the right to refuse or grant the surrender of its own subjects or citizens to the other party.

ARTICLE IV.

The extradition shall not take place if the person claimed on the part of Her Majesty's Government, or the person claimed on the part of the Government of Chile, has already been tried and discharged or punished, or is still under trial in the territory of the Republic of Chile or in the United Kingdom respectively, for the crime for which his extradition is demanded.

If the person claimed on the part of Her Majesty's Government, or on the part of the Government of Chile, should be under examination for any other crime in the territory of the Republic of Chile or in the United Kingdom respectively, his extradition shall be deferred until the conclusion of the trial, and the full execution of any punishment awarded to him.

ARTICLE V.

The extradition shall not take place if, subsequently to the commission of the crime, or the institution of the penal prosecution or the conviction thereon, exemption from prosecution or punishment has been acquired by lapse of time, according to the laws of the State applying or applied to.

It shall likewise not take place when, according to the law of either country, the maximum punishment for the offence is imprisonment for less than one year.

ARTICLE VI.

A fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded is one of a political character, or if he proves that the requisition for his surrender has, in fact, been made with a view to try or punish him for an offence of a political character.

ARTICLE VII.

A person surrendered can in no case be kept in prison or be brought to trial in the State to which the surrender has been made, for any other crime, or on account of any other matters, than those for which the extradition shall have taken place, until he has been restored, or has had an opportunity of returning to the State by which he has been surrendered.

This stipulation does not apply to crimes committed after the extradition.

ARTICLE VIII.

The requisition for extradition shall be made through the Diplomatic Agents of the High Contracting Parties respectively.

The requisition for the extradition of an accused person must be accompanied by a warrant of arrest issued by the competent authority of the State requiring the extradition, and by such evidence as, according to the laws of the place where the accused is found, would justify his arrest if the crime had been committed there.

If the requisition relates to a person already convicted, it must be accompanied by the sentence of condemnation passed against the convicted person by the competent Court of the State that makes the requisition for extradition.

A sentence passed *in contumaciam* is not to be deemed a conviction, but a person so sentenced may be dealt with as an accused person.

ARTICLE IX.

If the requisition for extradition be in accordance with the foregoing stipulations, the competent authorities of the State applied to shall proceed to the arrest of the fugitive.

ARTICLE X.

A criminal fugitive may be apprehended under a warrant issued by any Police Magistrate, Justice of Peace, or other competent authority in either country, on such information or complaint, and such evidence, or after such proceedings as would, in the opinion of the authority issuing the warrant, justify the issue of a warrant if the crime had been committed or the person convicted in that part of the dominions of the two Contracting Parties in which the Magistrate, Justice of Peace, or other competent authority, exercises jurisdiction; provided, however, that in the United Kingdom the accused shall, in such case, be sent as speedily as possible before a Police Magistrate in London. He shall, in accordance with this Article, be discharged, as well in the Republic of Chile as in the United Kingdom, if within the term of ninety days a requisition for extradition shall not have been made by the Diplomatic Agent of his country in accordance with the stipulations of this Treaty. The same rule shall apply to the cases of persons accused or convicted of any of the crimes or offences specified in this Treaty, and committed in the high seas on board any vessel of either country which may come into a port of the other.

ARTICLE XI.

The extradition shall take place only if the evidence be found sufficient, according to the laws of the State applied to, either to justify the committal of the prisoner for trial, in case the crime had been committed in the territory of the same State, or to prove that the prisoner is the identical person convicted by the Courts of the State which makes the requisition, and that the crime of which he has been convicted is one in respect of which extradition could, at the time of such conviction, have been granted by the State applied to; and no criminal shall be surrendered until after the expiration of fifteen days from the date of his committal to prison to await the warrant for his surrender.

ARTICLE XII.

In the examinations which they have to make in accordance with the foregoing stipulations, the authorities of the State applied to shall admit as valid evidence the sworn depositions or the affirmations of witnesses taken in the other State, or copies thereof, and likewise the warrants and sentences issued therein, and certificates of, or judicial documents stating the fact of a conviction, provided the same are authenticated as follows:—

1. A warrant must purport to be signed by a Judge, Magistrate, or officer of the other State.
2. Depositions or affirmations, or the copies thereof, must purport to be certified, under the hand of a Judge, Magistrate, or officer of the other State, to be the original depositions or affirmations, or to be true copies thereof, as the case may require.
3. A certificate of, or judicial document stating, the fact of a conviction must purport to be certified by a Judge, Magistrate, or officer of the other State.

4. In every case such warrant, deposition, affirmation, copy, certificate, or judicial document must be authenticated, either by the oath of some witness, or by being sealed with the official seal of the Minister of Justice, or some other Minister of the other State; but any other mode of authentication for the time being permitted by the law of the country where the examination is taken may be substituted for the foregoing.

ARTICLE XIII.

If the individual claimed by one of the High Contracting Parties in pursuance of the present Treaty should be also claimed by one or several other Powers on account of other crimes or offences committed upon their respective territories, his extradition shall be granted to the State whose demand is earliest in date.

ARTICLE XIV.

If sufficient evidence for the extradition be not produced within two months from the date of the apprehension of the fugitive, or within such further time as the State applied to, or the proper Tribunal thereof, shall direct, the fugitive shall be set at liberty.

ARTICLE XV.

All articles seized which were in the possession of the person to be surrendered at the time of his apprehension shall, if the competent authority of the State applied to for the extradition has ordered the delivery of such articles, be given up when the extradition takes place; and the said delivery shall extend not merely to the stolen articles, but to everything that may serve as a proof of the crime.

ARTICLE XVI.

All expenses connected with extradition shall be borne by the demanding State.

ARTICLE XVII.

The stipulation of the present Treaty shall be applicable to the Colonies and foreign possessions of Her Britannic Majesty, so far as the laws in such Colonies and foreign possessions respectively will allow.

The requisition for the surrender of a fugitive criminal, who has taken refuge in any of such Colonies or foreign possessions, shall be made to the Governor or chief authority of such Colony or possession by the chief Consular officer of the Republic of Chile in such Colony or possession.

Such requisition may be disposed of, subject always, as nearly as may be, and so far as the law of such Colony or foreign possession will allow, to the provisions of this Treaty, by the said Governor or chief authority, who, however, shall be at liberty either to grant the surrender or to refer the matter to his Government.

Her Britannic Majesty shall, however, be at liberty to make special arrangements in the British Colonies and foreign possessions for the surrender of Chilean criminals who may take refuge within such Colonies and foreign possessions, on the basis, so far as the law of such Colony or foreign possession will allow, of the provisions of the present Treaty.

Requisitions for the surrender of a fugitive criminal emanating from any Colony or foreign possession of Her Britannic Majesty shall be governed by rules laid down in the preceding Articles of the present Treaty.

ARTICLE XVIII.

The present Treaty shall come into force ten days after its publication in conformity with the forms prescribed by the laws of the High Contracting Parties. It may be terminated by either of the High Contracting Parties by a notice not exceeding one year, and not less than six months.

It shall be ratified, after receiving the approval of the Congress of the Republic of Chile, and the ratifications shall be exchanged at Santiago as soon as possible.

In witness whereof the respective Plenipotentiaries have signed the same, and affixed thereto their respective seals.

Done at Santiago, the twenty-sixth day of January, in the year 1897.

(L.S.) J. G. KENNEDY.

And whereas the ratifications of the said Treaty were exchanged at Santiago on the fourteenth day of April, one thousand eight hundred and ninety-eight.

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 Acts, doth order, and it is hereby ordered, that from and after the twenty-second day of August, one thousand eight hundred and ninety-eight, the said Acts shall apply in the case of Chile, and of the said Treaty with the President of the Republic of Chile.

Provided always that the operation of the said Acts shall be and remain suspended within the Dominion of Canada so long as an Act of the Parliament of Canada passed in 1886, and entitled, "An Act respecting the extradition of Fugitive Criminals," shall continue in force there, and no longer.

J. H. Harrison.