

## GOVERNMENT NOTIFICATION.—No. 171.

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

By Command,

J. H. STEWART LOCKHART,  
*Colonial Secretary.*

Colonial Secretary's Office, Hongkong, 21st March, 1899.

## CIRCULAR.

DOWNING STREET,  
9th February, 1899.

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 2nd of February, 1899, for giving effect to the Treaty between Her Majesty and the Queen of the Netherlands for the mutual extradition of fugitive criminals, signed at London on the 26th of September, 1898, the ratifications of which were exchanged at London on the 14th of December, 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.—NETHERLANDS.

*Osborne House, Isle of Wight, 2nd February, 1899.*

At the Court at *Osborne House, Isle of Wight*, the 2nd day of *February, 1899.*

PRESENT,

The QUEEN'S Most Excellent Majesty.

Lord President.  
Lord Privy Seal.

Duke of Marlborough.  
Earl of Kintore.

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 September, one thousand eight hundred and ninety-eight, between Her Majesty and the Queen of the Netherlands 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, Empress of India, and Her Majesty the Queen of the Netherlands, having mutually resolved to conclude a new Treaty for the extradition of criminals, the said High Contracting Parties have named as Their Plenipotentiaries to conclude a Treaty for this purpose, that is to say:

“Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, the Most Honourable Robert Arthur Talbot Gascoyne Cecil, Marquess of Salisbury, Earl of Salisbury, Viscount Cranborne, Baron Cecil, Peer of the United Kingdom, Knight of the Most Noble Order of the Garter, Member of Her Majesty's Most Honourable Privy Council, Her Majesty's Principal Secretary of State for Foreign Affairs, &c., &c.;

“And Her Majesty the Queen of the Netherlands, Alexander William Baron Schimmelpenninck van der Oye, Chargé d'Affaires, *ad interim*, of the Netherlands in London, Knight of the Order of Orange Nassau, &c., &c.;

"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 to each other those persons who, being accused or convicted of a crime or offence committed in the territory of the one Party, shall be found within the territory of the other Party, under the circumstances and conditions stated in the present Treaty.

#### "ARTICLE II.

"The crimes or offences for which the extradition is to be granted are the following :—

"1. Murder, including infanticide, or attempt, or conspiracy to murder, including such crimes when directed against the Sovereign, his heir, or any other person whomsoever, provided that the crime is not of a political character.

"2. Manslaughter, including the manslaughter of a child.

"3. Assault occasioning actual bodily harm.

"4. Maliciously wounding or inflicting grievous bodily harm.

"5. Counterfeiting or altering money, or uttering counterfeit or altered money.

"6. Forgery, counterfeiting or altering, or uttering what is forged, counterfeited or altered.

"7. Embezzlement ; fraud by a bailee, banker, agent, factor, trustee, or director or member or public officer of any Company, made criminal by any law for the time being in force ; or larceny.

"8. Malicious injury to property if the offence be indictable.

"9. Obtaining money, goods, or valuable securities by false pretences.

"10. Crimes against bankruptcy law.

"11. Perjury, or subornation of perjury.

"12. Rape.

"13. Carnal knowledge, or any attempt to have carnal knowledge, of a girl under 16 years of age.

"14. Indecent assault.

"15. Administering drugs, or using instruments with intent to procure the miscarriage of a woman.

"16. Abduction.

"17. Child stealing.

"18. Kidnapping of minors and their false imprisonment.

"19. Burglary or house-breaking.

"20. Arson.

"21. Robbery with violence.

"22. Any malicious act done with intent to endanger the safety of a railway train.

"23. Threats by letter or otherwise, with intent to extort.

"24. Piracy by law of nations.

"25. Sinking or destroying a vessel at sea, or attempting to do so.

"26. Assaults on board a ship on the high seas, with intent to destroy life, or do grievous bodily harm.

"27. Revolt by two or more persons on board a ship on the high seas, against the authority of the master.

"28. Dealing in slaves in such a manner as to constitute a criminal offence against the laws of both States.

"Extradition is also to be granted for participation in any of the aforesaid crimes, provided such participation be an extradition crime by the laws of the State applied to.

"In the foregoing cases extradition shall take place only when the crime, if committed within the jurisdiction of the country on which the claim for surrender is made, would constitute an extradition crime by the laws of that country.

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

#### "ARTICLE III.

"Either Government may, in its absolute discretion, refuse to surrender its own subjects to the other Government.

#### "ARTICLE IV.

"The extradition shall not take place if the person claimed on the part of the British Government, or the person claimed on the part of the Netherland Government, has already been tried and discharged or punished, or is actually upon his trial, within the territory of the other of the two High Contracting Parties, for the crime for which his extradition is demanded.

"If the person claimed on the part of the British Government, or if the person claimed on the part of the Netherland Government, should be under examination or is undergoing sentence under a conviction, for any other crime within the territories of the two High Contracting Parties respectively, his extradition shall be deferred until after he has been discharged, whether by acquittal or on expiration of his sentence, or otherwise.

"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 applied to.

"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 prove that the requisition of 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 may 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 had an opportunity during one month 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.

"Pending the presentation of the demand for extradition through the Diplomatic channel, a fugitive criminal may be apprehended under a warrant issued by any Police Magistrate, Justice of the 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 the 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 Magistrate. He shall, in accordance with this Article, be discharged, as well in the Netherlands as in the United Kingdom, if within the term of twenty days a requisition for extradition shall not have been made by the Diplomatic Agent of the demanding 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 on the high seas on board any vessel of either country which may come into a port of the other.

"ARTICLE XI.

"If the fugitive have been arrested in the British dominions he shall forthwith be brought before a competent Magistrate, who is to examine him, and to conduct the preliminary investigation of the case, just as if the apprehension had taken place for a crime committed in the British dominions.

"In the examinations which they have to make in accordance with the foregoing stipulations, the authorities of the British dominions shall admit as valid evidence depositions or statements on oath or the affirmations of witnesses taken in the Netherlands, 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 Netherlands.

"2. Depositions or affirmations, or the copies thereof, must purport to be certified under the hand of a Judge, Magistrate, or officer of the Netherlands, to be the original depositions or affirmations, or to be the 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 Netherlands.

"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 State of the Netherlands; but any other mode of authentication for the time being permitted by the law in that part of the British dominions where the examination is taken may be substituted for the foregoing.

#### "ARTICLE XII.

"If the fugitive have been arrested in the dominions of the Netherlands the officer of justice shall prefer a requisition within three days after the arrest, or, if the arrest have not taken place, or if it have taken place prior to the application for extradition, then within three days after the receipt of authority for that purpose from the Netherland Government in order that the person claimed may be interrogated by the Court, and that it may express its opinion as to the grant or refusal of extradition.

"Within fourteen days after the interrogatory the Court shall forward its opinion and its decision, with the papers in the case to the Minister of Justice.

"The extradition shall only be granted on the production, either in original or in authenticated copy:—

"1. Of a conviction; or,

"2.—(a.) Of a warrant of arrest (which, by the law of the British dominions, is the only document which is granted when it is adjudged upon evidence taken on oath that the accused ought to be taken into custody), issued in the form prescribed by British law, and indicating the offence in question sufficiently to enable the Netherland Government to decide whether it constitutes, in contemplation of Netherland law, a case provided for by the present Treaty; and,

"(b.) Of the evidence.

"In the examinations which they have to make in accordance with the foregoing stipulations, the authorities of the Netherland dominions shall admit as valid evidence depositions or statements on oath, or the affirmations of witnesses taken in the British dominions, 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 British dominions.

"2. Depositions or affirmations, or the copies thereof, must purport to be certified under the hand of a Judge, Magistrate, or officer of the British dominions, 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 British dominions.

"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 one of the Principal Secretaries of State, or some other Minister of State of the British dominions, but any other mode of authentication for the time being permitted by law in that part of the dominions of the Netherlands where the examination is taken may be substituted for the foregoing.

#### "ARTICLE XIII.

"The extradition shall not take place unless the evidence be found sufficient, according to the laws of the State applied to, either to justify the committal of the prisoner for trial, if the crime had been committed in the territory of the said 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. The fugitive criminal shall not be surrendered until the expiration of fifteen days from the date of his being committed to prison to await his surrender.

#### "ARTICLE XIV.

"If the individual claimed by one of the two 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 that State whose demand is earliest in date.

#### "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 thereof, 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.

"The respective Governments mutually renounce all claim for the repayment of expenses incurred by them in the arrest and maintenance and transport of the person to be surrendered, and all other expenses which may be incurred within the limits of their respective territories until the person to be surrendered is placed on board ship, together with the expenses of giving up and returning all seized articles and of sending and returning the papers containing proof of the crime, or other documents, and they reciprocally agree to bear all such expenses themselves.

"The above stipulations, however, shall not apply to extradition to and from Canada, as regards which Colony all the expenses shall be borne by the demanding State.

"The person to be extradited shall be sent to the port which the Diplomatic or Consular Agent of the demanding State shall indicate.

## "ARTICLE XVII.

"If in any criminal matter pending in any Court or Tribunal of one of the two countries it is thought desirable to take the evidence of any witness in the other, such evidence may be taken by the judicial authorities in accordance with the laws in force on this subject in the country where the witness may be; and any expenses incurred in taking such evidence shall be defrayed by the country in which it is taken.

## "ARTICLE XVIII.

"The stipulations of the present Treaty shall apply to the Colonies and foreign possessions of the two High Contracting Parties, but being based upon the legislation of the mother country, shall only be observed on either side so far as they may be compatible with the laws in force in those Colonies or possessions.

"The demand for the extradition of an offender who has taken refuge in a Colony or foreign possession of either Contracting Party may also be made directly to the Governor or principal functionary of that Colony or possession by the Governor or principal functionary of a Colony or possession of the other Contracting Party when the two Colonies or foreign possessions are situated in Asia, Australia (including New Zealand and Tasmania), the Pacific and Indian Oceans, or South or East Africa.

"The same rule shall be followed if the two Colonies or foreign possessions are situated in America (including the West India Islands).

"The said Governors or principal functionaries shall have the power either of granting the extradition or of referring the question to their Government.

"In all other cases, the demand for extradition shall be made through the Diplomatic channel.

"The period of provisional arrest provided for in Article X shall for the purposes of this Article be extended to sixty days.

## "ARTICLE XIX.

"From the day when the present Treaty shall come into force the Treaty of Extradition between the two countries of the 19th June, 1874, shall cease to have effect; but the present Treaty shall apply to all crimes within the Treaty, whether committed before or after the day when it comes into force.

## "ARTICLE XX.

"The present Treaty shall be ratified, and the ratifications shall be exchanged as soon as possible.

"The Treaty shall come into force three months after the exchange of the ratifications. It may be terminated by either of the High Contracting Parties at any time on giving to the other six months' notice of its intention to do so.

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

"Done in duplicate at London, this 26th day of September, 1898.

"SALISBURY.

"SCHIMMELPENNINCK v. D. OYE."

And whereas the ratifications of the said Treaty were exchanged at London on the fourteenth day of December, 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 fourteenth day of March, one thousand eight hundred and ninety-nine, the said Acts shall apply in the case of the Netherlands, and of the said Treaty with the Queen of the Netherlands.

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 passel in one thousand eight hundred and eighty-six, and entitled "An Act respecting the extradition of Fugitive Criminals," shall continue in force there, and no longer.

*A. W. FitzRoy.*