

DESPATCHES FROM THE SECRETARY OF STATE.

No. 290.

ORDER IN COUNCIL APPLYING EXTRADITION ACTS 1870-1906
TO PARAGUAY.AT THE COURT AT BUCKINGHAM PALACE,
THE 5TH DAY OF JULY, 1911.

PRESENT,

THE KING'S MOST EXCELLENT MAJESTY.

Lord PRESIDENT.
 Lord CHAMBERLAIN.
 Lord KINNEAR.
 Mr. Secretary CHURCHILL.
 Mr. Secretary HARCOURT.
 Sir JOSEPH WARD.
 Sir CHARLES FITZPATRICK.
 Sir GEORGE MURRAY.
 Sir EDWARD MORRIS.
 Sir T. VEZEY STRONG.
 Sir WILLIAM ANSON.
 Sir FREDERICK POLLOCK.

Sir JOHN RHYS.
 Sir RUFUS ISAACS.
 Mr. MCKINNON WOOD.
 Mr. T. J. MACNAMARA.
 Mr. J. H. WHITLEY.
 Mr. CHARLES FENWICK.
 Mr. J. W. WILSON.
 Mr. A. BONAR LAW.
 Mr. W. HAYES FISHER.
 Mr. LAURENCE HARDY.
 Mr. F. E. SMITH.
 Mr. F. HUTH JACKSON.

WHEREAS by the Extradition Acts, 1870 to 1906, 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, His Majesty may, by Order in Council, direct that the said Acts shall apply in the case of such foreign State; and that His 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 His 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 twelfth day of September, one thousand nine hundred and eight, between His Majesty King Edward VII and the President of the Republic of Paraguay, for the extradition of criminals, which Treaty is in the terms following:—

His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India, and His Excellency the President of the Republic of Paraguay, having determined, by common consent, to conclude a Treaty for the extradition of criminals, have accordingly named as their Plenipotentiaries:

His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India, Cecil Gosling, Esquire, His Chargé d'Affaires in the Republic of Paraguay;

And His Excellency the President of the Republic of Paraguay, His Excellency Doctor Eusebio Ayala, Minister for Foreign Affairs of the Republic of Paraguay;

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 1.

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 2, committed in the territory of the one Party, shall be found within the territory of the other Party.

ARTICLE 2.

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

1. Murder, 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 unlawful carnal knowledge of a girl under the age of 16 years, so far as such acts are punishable by the law of the State upon which the demand is made.
6. Indecent assault.
7. Kidnapping and false imprisonment, child stealing.
8. Abandoning, exposing, or detaining children.
9. Abduction.
10. Bigamy.
11. Maliciously wounding or inflicting grievous bodily harm.
12. Assault occasioning actual bodily harm.
13. Threats, by letter or otherwise, with intent to extort money or other things of value.
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.
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.
19. Forgery, or uttering what is forged.
20. Crimes against bankruptcy law.
21. Any malicious act done with intent to endanger the safety of any persons travelling or being upon a railway.
22. Malicious injury to property if such offence be indictable.
23. 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.
24. Dealing in slaves in such manner as to constitute a criminal offence against the laws of both States.

With regard to the effect of this last paragraph, as the Paraguayan Penal Code does not consider slave-dealing, it is declared by the present Treaty that that act is considered as piracy and subject to the penalties of that offence.

Extradition shall also 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 3.

Neither party is obliged to surrender its own subjects or citizens to the other party.

ARTICLE 4.

Extradition shall not take place if the person claimed on the part of His Britannic Majesty's Government, or of the Government of Paraguay, has already been tried and discharged or punished, or is awaiting trial in the territory of the United Kingdom or in the Republic of Paraguay respectively for the crime for which his extradition is demanded.

If the person claimed on the part of His Britannic Majesty's Government, or of the Government of Paraguay, should be awaiting trial or undergoing sentence for any other crime in the territory of the United Kingdom or the Republic of Paraguay respectively, his extradition shall be deferred until after he has been discharged, whether by acquittal or on expiration of sentence, or otherwise.

ARTICLE 5.

Extradition shall not be granted if exemption from prosecution or punishment has been acquired by lapse of time, according to the laws of the State applying or applied to.

Neither shall it be granted if, according to the law of either country, the maximum punishment for the offence charged is imprisonment for less than one year.

ARTICLE 6.

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 7.

A person surrendered shall 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.

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

ARTICLE 8.

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 a copy of the judgment passed on 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 9.

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 10.

A criminal fugitive may be apprehended under a warrant issued by any 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 said authority exercises jurisdiction; but the arrested fugitive shall be sent as speedily as possible before the competent Magistrate of the country where he is arrested.

He shall, in accordance with this Article, be discharged, as well in the Republic of Paraguay as in the United Kingdom, if within the term of sixty 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 on the high seas on board any vessel of either country which may come into a port of the other.

ARTICLE 11.

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 if extradition is claimed in respect of an offence of which the fugitive has been already convicted, to prove that the prisoner is the person convicted, 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.

ARTICLE 12.

The extradition of fugitives under the provisions of this Treaty shall be carried out in His Britannic Majesty's dominions and in the Republic of Paraguay respectively, in conformity with the laws regulating extradition for the time being in force in the surrendering State.

ARTICLE 13.

In the examination 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 14.

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 15.

If sufficient evidence for the extradition be not produced within ninety days 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 16.

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 17.

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

ARTICLE 18.

The stipulations of the present Treaty shall be applicable to the Colonies and Possessions of His Britannic Majesty, so far as their local laws permit; for which purpose His Majesty's Government shall be at liberty to make special arrangements with them for the surrender of criminals to Paraguay in accordance with the terms of the Treaty.

The requisition for the extradition of a criminal, who has taken refuge in one of the British Colonies or Possessions, shall be addressed to the Governor or chief authority of the same by the senior local Paraguayan Consular officer, or failing him, by the Ministry for Foreign Affairs.

The Governor, or authority referred to, will deal with the demand in accordance with the provisions of the present Treaty, and to the extent permitted by the local laws; but he will be at liberty either to surrender the criminal or to refer the case to the British Government.

As regards demands for the surrender of criminals fugitives from British Colonies and Possessions, they will be governed by the rules laid down in the present Treaty.

ARTICLE 19.

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.

ARTICLE 20.

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, and the ratifications shall be exchanged at Asuncion as soon as possible.

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

Done in duplicate at Asuncion, the twelfth day of September, nineteen hundred and eight.

(L.S.) CECIL GOSLING.

(L.S.) EUSEBIO AYALA.

And whereas the ratifications of the said Treaty were exchanged at Asuncion on the thirtieth day of January, one thousand nine hundred and eleven:

Now, therefore, His Majesty, by and with the advice of His Privy Council, and in virtue of the authority committed to Him by the said recited Acts, doth order, and it is hereby ordered, that from and after the Seventeenth day of July, one thousand nine hundred and eleven, the said Acts shall apply in the case of Paraguay, and of the said Treaty with the President of the Republic of Paraguay:

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, being Part I of chapter 155 of the Revised Statutes of Canada, 1906, and entitled "An Act respecting the Extradition of Fugitive Criminals," shall continue in force there, and no longer.

ALMERIC FITZROY.

No. 291.

CIRCULAR.

DOWNING STREET,
28th August, 1911.

SIR,—With reference to my Circular despatch of the 25th March last respecting the application of the penny postal rate to letters from the Commonwealth of Australia addressed to British Colonies and Protectorates, I have the honour to inform you that the Australian postal authorities have intimated that the new postal rate came into operation on the 1st May last.

I have, etc.,

L. HARCOURT.

The Officer Administering the Government of
HONGKONG.