

IN RE CHARLESTON.

District Court, D. Minnesota.

May, 1888.

1. EXTRADITION—COMPLAINT—FORGERY.

A complaint in extradition proceedings for forgery, which minutely sets forth the note alleged to be forged, its amount, the date, and names of the parties, and the bank which discounted the note, is sufficient, both in substance and in form.

2. SAME—IDENTITY OF PERSON.

The identity of the prisoner is sufficiently established when, upon being brought before the commissioner, he admits that he is the person named in the complaint, and that he, executed the note therein described.

3. SAME—EVIDENCE—DEPOSITIONS—AUTHENTICATION.

The act of congress (22 St. at Large, p. 216, § 5) declares that in extradition cases copies of depositions relating to allegations in the complaint shall be

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admitted as evidence for all the purposes of the hearing, if they shall be properly and legally authenticated, so as to entitle them to be received for similar purposes by the tribunals of the foreign country from which the accused shall have escaped, and the certificate of the principal diplomatic or consulate officer shall be proof that any deposition, warrant, or other paper, or copies thereof, so offered, are duly authenticated. *Held*, that it is not necessary, in addition to the certificate of the consul to prove that the law of the foreign country would allow "copies of original depositions taken before a magistrate to be received as competent proof against the accused for purposes of commitment."

Habeas Corpus.

James J. McCafferty, for petitioner.

James E. Markham contra.

NELSON, J. A complaint of John Wilson Murray setting forth that he is chief of the provincial detective department of the province of Ontario, in the dominion of Canada, and the duly-authorized agent of the government of said dominion to prosecute an extradition proceeding, was made before William A. Spencer, commissioner of the circuit court of the United States in this district, duly authorized to hear extradition proceedings under the treaty between Great Britain and the United States, charging the petitioner with the crime of forgery, alleged to have been committed at the township of Raleigh, in the county of Kent and province of Ontario. A warrant issued, and he was arrested and held and committed by the commissioner for extradition. He is brought before me on a writ of *habeas corpus* with the proceedings under a writ of *certiorari*. A demurrer is interposed and it is urged by the counsel for the petitioner that the proceedings before the commissioner are irregular, and the evidence insufficient to justify this commitment.

Article 10 of the treaty with Great Britain declares that the persons charged with crime are to be delivered up, "provided that this shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person, so charged shall be found, would justify his apprehension and commitment for trial if the crime or offense had there been committed," and the magistrate shall have authority to issue a warrant that the person charged may be brought before such magistrate, "to the end that the evidence of criminality may be heard and considered; and if, on such hearing, the evidence be deemed sufficient to sustain the charge, it shall be the duty of the examining magistrate to certify the same to the proper executive authority that a warrant may issue for the surrender of such fugitive." By section 5270, Rev. St. U. S., commissioners duly designated may issue warrants and hear such cases. The questions involved before the examining magistrates, on a hearing, within the scope of the obligations assumed by the treaty, are clearly (1) the identity of the person charged with the crime; (2) the sufficiency of the evidence of criminality.

It is urged that the complaint before the commissioner is not sufficient to give him jurisdiction. This objection is not well taken. The instrument alleged to be forged, the

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amount of the note, the date and names of the persons, and the bank which discounted the note, are all minutely

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set forth. The complaint is not only good in substance, but in form, and so describes the crime that the prisoner could not be mistaken in regard to the accusation. The commissioner had full jurisdiction to issue the warrant, and proceed in the case. The identity of the prisoner is established by his own admission, when brought before the commissioner, that he was the person named in the complaint, and that he executed the note therein described. Nothing further was necessary except to show probable cause of guilt by competent evidence. If this is done, the prisoner must be remanded. The original note was produced, and certain depositions offered in evidence respecting the allegations in the complaint. The manager of the bank which discounted the note certified, as appears in the copy of his deposition, that the prisoner brought the note alleged to be forged to the bank, and represented that the note was made by persons whose names are charged to be forged. The copy of the deposition of Robinson, whose name appears as one of the makers of the note, states that he did not sign it, "nor was the prisoner or any other person authorized to sign it for me." If these depositions are competent evidence, and properly received, the sufficiency of the evidence of criminality is not doubtful. These copies of depositions and all the foreign papers offered in evidence have attached a certificate of the American consul at the city of Toronto, in the province of Ontario and dominion of Canada, that they are properly and legally authenticated to entitle them to be used for similar purposes in the tribunals of the said province and of the said dominion.

An objection is interposed to this certificate the force of which I do not clearly comprehend. The counsel concedes that the question to be considered is the competency of the copies of the depositions, as evidence of criminality, and it is also true that the competency of the evidence is to be determined by our law, according to the rules of evidence which congress has prescribed in the act passed August 3, 1882, but it is claimed that proof should have been given, in addition to the certificate of the consul, that the law of the dominion of Canada would allow "copies of original depositions taken before a magistrate to be received as competent proof against the accused for the purposes of commitment." I cannot appreciate this point. The fact for the commissioner to determine is the criminality of the person charged, and by the treaty the question is, what is competent evidence of that fact here in Minnesota where the prisoner is arrested? The act of congress must settle this, which declares in substance "that in extradition cases copies of depositions relating to the allegations in the complaint shall be received and admitted as evidence on the hearing, for all the purposes of the hearing, if they shall be properly and legally authenticated, so as to entitle them to be received for similar purposes by the tribunals of the foreign country from which the accused party shall have escaped, and the certificate of the principal diplomatic or consulate officer shall be proof that any deposition, warrant, or other paper, or copies thereof so offered are authenticated in the manner required by this act." See 22 St. at Large, § 5, p. 216.

The certificate of the consul to the depositions fully meets the requirements of this act to entitle the depositions to be received by the commissioner as evidence of criminality; It has been held by all tribunals which have passed upon this act of 1882 that "similar, purposes" refers to the words "for all the purposes of such hearing," that is, to proof of criminality. See *In re McPhun*, 30 Fed. Rep. 57; *In re Herris*, 32 Fed. Rep. 583; *In re Hinrich*, 5 Blatchf. 414, 425 and others.

The other objections to the proceedings are technical. According to the record, the prisoner, when shown the note, admitted; that he made it, and got the money on it from the Merchants' Bank in Chatham. I find, no error in the proceedings before the commissioner, and an order will be entered dismissing the writ of *habeas corpus*, and remanding the prisoner.