

**RETURN RELATING TO CASES OF
EXTRADITION OF PRISONERS
UNDER TREATY BETWEEN GREAT
BRITAIN AND UNITED STATES**

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Return Relating to Cases of Extradition of Prisoners Under Treaty Between Great Britain and United States by Various

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VARIOUS

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RELATIVE TO

CASES OF EXTRADITION OF PRISONERS

UNDER TREATY BETWEEN

GREAT BRITAIN AND THE UNITED STATES.

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EXTRADITION PAPERS.

Copy of Telegram received from the Right Honorable the Earl of Carnarvon, dated 26th May, 1876.

House of Commons has voted Address for return of all cases of extradition of prisoners, under Treaty between Great Britain and United States, showing charges on which prisoner was demanded, and those on which he was tried; also stating in each case whether any special stipulation beyond those in Treaty was required or conceded by either country as a condition of surrender. Please send return fr Canada early.

The Earl of Carnarvon to the Earl of Dufferin.

DOWNING STREET, 1st June, 1876.

MY LORD,—With reference to my telegram of the 26th May, I have the honor to transmit to you the enclosed copy of an address recently voted by the House of Commons for a return of all cases of extradition of prisoners between Great Britain and the United States, with certain specified particulars relating to such cases.

I should be glad if your Government could furnish me with the particulars in regard to Canada, for which I applied in my telegram above referred to, shewing the charges on which the prisoner in each case was demanded, and those on which he was tried, not only in the cases of prisoners surrendered to Canada, but also in those of prisoners surrendered by Canada to the United States, though, possibly, the particulars in these latter cases might not be required to be laid before Parliament.

I have, &c.,

(Signed) CARNARVON.

Governor General,

The Right Hon. the Earl of DUFFERIN, K.P., G.C.M., G.K.C.B.

HOUSE OF COMMONS.

Extradition of prisoners (Great Britain and United States).— Address for return of all cases of extradition which have occurred under Treaty between Great Britain and the United States, shewing, in the case of prisoners surrendered to Great Britain, the charges on which the prisoner was demanded, and those on which he was tried; and also stating, in each case, whether any special stipulation beyond those contained in the Treaty was required or conceded by the Government of either country as a condition of the surrender.

The Earl of Dufferin to the Earl of Carnarvon.

GOVERNMENT HOUSE,
OTTAWA, 24th July, 1876.

MY LORD,—I have the honor of enclosing two memorandums from the Department of Justice, forwarding returns in reference to matters of extradition.

These returns complete the information called for in your Lordship's telegraphic message of the 26th May last.

I have, &c.,
(Signed) DUFFERIN.

The Right Hon. the Earl of CARNARVON,
&c., &c., &c.

DEPARTMENT OF JUSTICE,
OTTAWA, July 24th, 1876.

With reference to the Minute of Council of the 29th May last, on the subject of Lord Carnarvon's cable telegram of the 26th May, the undersigned has the honour to report, that by memorandum of the 1st June, the Minister of Justice presented to Your Excellency for transmission to Lord Carnarvon, a partial return as proposed by the report referred to in the Minute of Council.

That return contained all the information which could be obtained upon the subject of enquiry with regard to prisoners extradited from Canada to the United States, between the 1st July, 1867, and the 1st May, 1876, and it also contained all the information obtainable upon the subject of prisoners extradited from the United States to Canada between the same dates, except upon the question of charges upon which the prisoners were tried; upon that question enquiries were made of the Provincial authorities.

The Minister of Justice also caused communication to be had with the Lieutenant-Governors of the Provinces, with a view to obtaining the information required with reference to extraditions which took place between the date of the treaty and the admissions of the Provinces into the confederation.

The undersigned has now the honor to submit a return as required by the House of Commons, embracing all such information as is obtainable upon the subject referred to in the Address of that House, or which may in any manner tend to elucidate the same.

This return embraces the partial return transmitted to Your Excellency on the 1st June last, and the undersigned recommends that that partial be withdrawn, and that Your Excellency should transmit to Lord Carnarvon the enclosed return lettered "A" to "Q" both inclusive, as being a full and complete return in answer to the Address.

(Signed) R. W. SCOTT,
Acting Minister of Justice.

CANADA.

Further return to an Address of the House of Commons for a return of all cases of extradition of prisoners which have occurred under Treaty between Great Britain and the United States, showing, in the case of prisoners surrendered to Great Britain, the charges on which the prisoner was demanded and those on which he was tried, and also stating in each case whether any special stipulation beyond those contained in the Treaty was required or conceded by the Government of either country as a condition of surrender.

SCHEDULE.

Extraditions to the United States.

- A. Statement of all cases of extradition from Upper Canada to the United States between the 9th August 1842, and the 30th June, 1867.
- B. Statement of all cases of extradition from Lower Canada to the United States.
- C. Letter from the Lieutenant-Governor of Nova Scotia, relative to cases of extradition to and from the United States between the 9th August, 1842, and the 30th June, 1867.
- D. Two letters and enclosures from the Lieutenant-Governor of New Brunswick, relative to cases of extradition to and from the United States, between the 9th August, 1842, and the 30th June, 1867.
- E. Telegram from the Lieutenant-Governor of British Columbia.
- F. Letter from the Lieutenant-Governor of Prince Edward Island.
- G. Statement of all cases of extradition from the Dominion of Canada to the United States between the 1st July, 1867 (the date of confederation), and the 1st May, 1876.

Extraditions from the United States.

- H. Statement of all cases of extradition from the United States to the Province of Upper Canada between the 9th August, 1842, and the 30th June, 1867.
- I. Statement of all cases of extradition from the United States to Lower Canada.
- K. Extraditions from the United States to Nova Scotia. See letter of Lieutenant-Governor Archibald, marked "C."
- L. Extraditions from the United States to New Brunswick. See letter from Lieutenant-Governor Tilley, marked "D."
- M. Extraditions from the United States to British Columbia. See telegram from Lieutenant-Governor Trutch, marked "E."
- N. Extraditions from the United States to Prince Edward Island. See letter from Lieutenant-Governor Hodgson, marked "F."
- O. Statement of all cases of extradition from the United States to the Dominion of Canada between the 1st July, 1867, (the date of confederation), and the 1st May, 1876.
- P. Judgment in the case of Regina v. Tubbee, in which the prisoner was discharged on *habeas corpus*.
- Q. Judgment in the case of Trueman B. Smith, in which the prisoner was discharged on *habeas corpus*.

"A. A."

RECORDER'S COURT.

(Before the Recorder of the City of Toronto.)

In the matter of Bennet G. Burley—Ashburton Treaty—Fugitive felons—British subjects—Belligerent rights—Robbery.

Held 1. That the Ashburton Treaty as to the extradition of fugitive felons, and our Acts passed to give effect to it, extend to British subjects committing the offences named in the Treaty, in the territory of the United States, and becoming fugitives to Canada.

Held 2. That it is in the discretion of the magistrate investigating into a charge under the Treaty against a person accused of one of the crimes mentioned in the Treaty, to receive evidence for the defence.

Held 3. That under the circumstances of the case as shown, as well on the part of the prosecution as the defence, that the accused who took the property of a non-

combatant citizen by violence from his person, was guilty of robbery, and liable to be surrendered under the Treaty.

(Toronto, January 20th, 1865.)

Duggan, Recorder.—On behalf of the prisoner, it is urged, first, that being a British subject he is not within the provisions of the Extradition Treaty; second, that before and at the time of the committing of the acts charged as the robbery war existed between the United States of America, and the said Confederate States; that such act was one which the prisoner, then engaged in a belligerent enterprise, had by the law of nations a right to commit.

With regard to the first point, the language of the treaty, as recited in our Act, 22 Vict. chap. 89 of the Consolidated Statutes of Canada is as follows:—"That Her Majesty and the said United States should, upon mutual recognition by them or their ministers, officers, or authorities, respectively made, deliver up to justice all persons who, being charged with the crime of murder, or piracy, or arson, or robbery, or forgery, or the utterance of forged paper, committed within the jurisdiction of either of the high contracting parties, should seek any asylum or be found within the territories of the other."

The terms employed are plain and most comprehensive, embracing all persons, without exception or qualification of any kind.

What persons in the words of the treaty are to be given up? Expressly "all persons who being charged," &c. That the treaty includes and was intended to include, without exception, all persons, irrespective of country or nation, I entertain no doubt, and therefore hold that the prisoner, on the ground of his being a British subject, is not exempt from its provisions. Then, as to the existence of war, I consider the existence of war proved. This important status is by the Supreme Court of the United States of America in the judgment given on March 19th, 1863, in case of the "Hiawatha" and "Amy Warwick," distinctly recognized to be that of the contending parties taking into account the whole proceedings of the prisoner as shown in the evidence for the prosecution it may not be justly presumed that he was engaged in the enterprise which he and others acting with him professed.

But I do say that it appears clear to me, upon the evidence, that the prisoner's arrangements for the alleged enterprise, the collecting of men and arms, were clandestinely made in this country, and were partially acted upon within this country, by proceeding from it direct with these men and arms into the adjoining territory of the United States of America, and that therein, and by these means, acts of hostility and violence were waged upon its non-combatant inhabitants, this country being happily at peace and in amity with the United States of America and with its people. I consider the above acts a flagrant violation of the public law, and a gross injustice done to our country.

Then as to the taking from Ashley of his money by violence, and the putting him into peril of his life, the avowed object of the alleged enterprise was the release of the prisoners at Johnson's Island. Johnson's Island is in the state of Ohio, and far away from the scene of war and warlike hostilities.

The country around is the abode of non-combatant people engaged in the ordinary peaceful avocations of every-day life, and it was through this country and amongst these people, that the alleged enterprise was attempted to be carried out. Would it be lawful for the belligerent enemies of the nation to which the people belong, simply on the ground of being such enemies, without any necessity for the acts by violence, and at the peril of the lives of these people to despoil them of their effects and plunder them at will? It is said by writers on international law that by the modern usage of nations which has now acquired the force of law, private property on land is exempt from confiscation, with the exception of such as may become booty in special cases, when taken from enemies in the field or in besieged towns, and military contributions levied upon the inhabitants of the hostile territory. It is not pretended that the prisoner committed the act complained of under any of the circumstances suggested. Ashley, when deprived of his money by violence, and

at the peril of his life, was to the knowledge of the prisoner such a non-combatant as I have described. If the prisoner on the occasion in question had an absolute right, without necessity of any kind, then to take Ashley's money at the peril of his life, would he not equally have had the right in like manner by violence to despoil of his money and effects every other non-combatant United States citizen whom he might happen to meet and choose to attack under colour of carrying out, or because of being engaged in a belligerent enterprise? I do not find that such a right exists or is sanctioned by the code of Christian and enlightened nations.

I have herein endeavoured to give all the facts and circumstances material on this proceeding, and I have now to state, in conclusion, that I find and determine that the evidence taken before me according to the laws of this province on the charge of robbery here preferred against the prisoner Bennet G. Burley, would justify the apprehension and committal for trial of the said Bennet G. Burley, according to the laws of this Province, for the said robbery, if the same had been committed in this Province.

ORDER FOR COMMITTAL.

A.

RETURN of all cases of Extradition of prisoners from the Province of Upper Canada to the United States under Treaty between Great Britain and the United States, between 9th August, 1842, and 30th June, 1867.

Name of Prisoner.	Charges on which Prisoner was		Date of Warrant of Extradition.	Charges on which Prisoner was tried.	Whether any special stipulation beyond those in Treaty was required or conceded by either country as a condition of surrender.
	Demanded.	Extradited.			
Jane Glene	Murder	On charge demanded.	June 28, 1849		
James McCaffrey.....	"	"	Mar. 5, 1850		
Gabriel Wright and John Guile	Burglary and assault with intent to commit murder.	Wright only extradited on charge of burglary and robbery.	May 10, 1850		
James McNally.....	Murder	On charge demanded.	Nov. 20, 1855		
Alexander Catter.	"	"	May 28, 1856		
George Pollett.....	"	"	May 31, 1858		
Owen Dudley	Forgery	"	Oct. 29, 1858		
Charles Miller and Catherine King	"	"	Dec. 14, 1858		
Henry Kaiples	"	"	Aug. 17, 1859		
John Faull	Robbery	"	May 15, 1859		
Joseph Bocarde	Uttering forged paper.	Forgery	Jan. 26, 1860		
Nelson Fenihart.....	Robbery	On charge demanded.	July 24, 1863		
Asher Warner	Uttering forged paper.	"	Oct. 1, 1864		
*Bennet G. Burley.....	Robbery	"	Jan. 31, 1865		
Clarence Madigan.....	Forgery and uttering forged paper.....	"	Feb. 20, 1865		
Paul Nestler.....	Forgery	"	May 4, 1865		
Alexander McCunnell.....	Murder	"	Apr. 21, 1866		
George Peet	"	"	Apr. 19, 1866		
John Bortles and Thos. W. Bortles.....	Assault with intent to kill	"	Mar. 9, 1868		
Samuel R. Lewis.....	Uttering forged paper.	"	Mar. 4, 1867		
David Rose	"	"	Mar. 26, 1867		

*See papers annexed marked "A A."