THE LAW OF EXTRADITION FROM AND TO BRITISH INDIA

BY

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SECOND EDITION

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"Cum vero non soleant civitates permittere ut civitas altera armata intra fines suos pœnæ expetendæ nomine veniat, neque id expediat, sequitur, ut civitas, apud quam degit qui culpæ est compertus, alterum facere debeat, aut ut ipsa interpellata pro merito puniat nocentem, aut ut eum permittat arbitrio interpellantis: hoc enim illud est dedere, quod in historiis sæpissime occurrit."—Grotius De jure Belli et pacis: Lib. II. c. XXI, IV.

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PREFACE TO THE FIRST EDITION.

THIS book was written and a greater part of it had been put into print before the war broke out. Had this not been the case its publication would have been further postponed.

While a state of war exists there is no place for extradition proceedings between the belligerents and all treaties on the subject are at an end, at any rate during the continuance of war.

Whether extradition treaties are abrogated or merely suspended during the continuance of hostilities is a more doubtful point. Perhaps the safer view is to regard such treaties as abrogated and to hold that they do not revive on the restoration of peace save by express agreement. This was the theory followed after the Franco-Prussian war in 1871.

A. P. M.

31*st December*, 1914.

PREFACE TO THE SECOND EDITION.

In preparing a new edition of this book we have not attempted to alter its nature as there is ample evidence to show that the book fulfils the purpose for which it was written. We have accordingly restricted ourselves to the task of making corrections wherever we have detected inaccuracies, and of bringing the book up to date by reference to the latest cases and the latest treaties.

We have dealt in the body of the book with the position as regards the treaties abrogated temporarily by the outbreak of the War of 1914-1918, and we only mention the point here because it is noticed in the preface to the first edition.

For very valuable assistance in the correction of the proofs we here express our gratitude to Mr. S. C. Sen of the Printing Branch of the Legislative Department of the Government of India.

L. G.
J. A. S.

26th March, 1927.

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Meaning of "Extradition."

"The law of extradition is, without doubt, founded upon the broad principle that it is to the interest of civilized communities that crimes, acknowledged to be such, should not go unpunished, and it is part of the comity of nations that one state should afford to another every assistance towards bringing persons guilty of such crimes to justice." *Per* Lord Russell, C. J., in *In re Arton* [1896], 1 Q. B., 108. In its international aspect it is usually based on the existence of a treaty which is made operative in municipal law by legislation. Thus in the debate in the House of Lords on the case of *The Creole* on the 14th February, 1842, it was stated by Lord Denman that "in this country there was no right of delivering up, indeed, no means of securing, persons accused of crimes committed in foreign countries." (Hansard —Third Series, Vol. LX, p. 321.) This theory, however, is by no means of universal acceptance. Most Continental nations regard the surrender of fugitive offenders as a purely political matter with which the Courts have no concern.

Surrender of fugitive offenders within Empire.

2. Closely akin to, though not in strictness part of, the law of extradition is the question of the surrender of fugitive offenders between different possessions of the Empire, and it is proposed to deal with this subject also as part of the law of extradition.

General law as to extradition (rendition).

3. Prior to The Extradition Act, 1870 (33 and 34 Vict., c. 52), there was no general statute giving legal validity to extradition treaties concluded with Foreign States by His Majesty the King, and a separate Act had to be passed on the occasion of each new treaty. This statute, as subsequently amended, is the foundation of the law of extradition for the whole Empire, except in the case of Canada where by Order in Council, dated 6th July, 1907, issued under section 18 of the Act, the operation thereof in Canada is suspended so long as Part I of Chapter 155 of "The Revised Statutes of Canada, 1906," shall continue in force. It will

be observed that the Act imposes four restrictions on extradition (see section 3), namely :—

(1) no extradition for political offences ;

(2) the offender must not be detained or tried for any offence prior to his surrender other than the extradition crime proved by the facts on which the surrender was grounded ;

(3) an undertrial or convict offender is not to be surrendered till the termination of his trial or sentence ;

(4) fifteen days must elapse before surrender from date of committal to await surrender ;

and no Order in Council under the Act can be made (see section 4) unless the treaty provides for these restrictions.

Application of Act to British India.

4. The application of the Act of 1870 to British possessions outside the United Kingdom is provided for by section 17, while section 18 provides for the saving of laws of British possessions. By an Order in Council, dated the 7th March, 1904, published in the *Gazette of India*, 1904, Pt. I, p. 363, which was issued in virtue of the powers conferred by section 18, Chapter II of the Indian Extradition Act, 1903, has been declared to have effect in British India as if it were part of The Extradition Act, 1870.

The general law as to fugitive offenders within the Empire.

5. The question of the surrender of fugitive offenders between the various possessions of the Empire has also been the subject of an Imperial statute, *viz.*, The Fugitive Offenders Act, 1881 (44 and 45 Vict., c. 69) ; and as in the case of The Extradition Act, 1870, provision has been made by section 32 thereof for the recognition of Acts of the legislatures of British possessions providing for the application and carrying into effect within those possessions of the Act in question.

Application of The Fugitive Offenders Act, 1881, to British India.

6. In the case of British India, this power has been exercised by the Order in Council, dated the 7th March, 1904, recognising Chapter IV of the Indian Extradition Act, 1903, and declaring that it should be given effect to throughout His Majesty's dominions and on the high seas, as if it were part of The Fugitive Offenders Act, 1881.

The Indian Extradition Act, 1903.

7. The Indian legislature in enacting The Indian Extradition Act, 1903, has, in addition to the modifications of these Imperial statutes in their application to British India in a manner necessary to adapt them to the circumstances of this country, also provided for cases not covered by the Imperial statutes. It will be convenient to summarise the provisions of this Act, which is made up of provisions which fall into several classes—

(1) The provisions of Chapter II which are part of The Extradition Act, 1870 (33 and 34 Vict., c. 52), and deal with the surrender of fugitive criminals to Foreign States to which that Statute applies.

(2) The provisions of Chapter III which deal with the surrender of fugitive criminals to States other than those to which that Statute applies.

(3) The provisions of Chapter IV which deal with the application of The Fugitive Offenders Act, 1881 (44 and 45 Vict., c. 69), to British India and are strictly not part of the law of extradition proper at all.

(4) The provisions of Chapter VI which provide for the execution of commissions issued by Criminal Courts outside British India which is also a subject outside the strict scope of the law of extradition.

Indian Law not exclusive but supplementary.

8. In applying the provisions of Chapter II of the Indian Extradition Act, 1903, therefore, the fact must always be borne in mind that those provisions are part of the general extradition law of the Empire, and the importance of this will be seen later in the notes to that Act. As has been pointed out above, the provisions of Chapter III only apply to those States to which The Extradition Acts of 1870 and 1873 do not apply, that is, to those States in respect of which His Majesty in Council has not made an Order in Council under section 2 of The Extradition Act, 1870. The provisions, therefore, of that Chapter constitute express statutory provision applying to British India only for the extradition

of criminals in cases not provided for by the general extradition law of the Empire.

Conspectus of British Indian Law.

9. It may be convenient here to exhibit in tabular form a general conspectus of the law regarding the rendition of fugitive offenders from British India.

RENDITION OF FUGITIVE OFFENDERS.

1. *States outside the Empire*	*Law applicable*
(*a*) to States where the Extradition Statutes apply.	The Extradition Acts, 1870 to 1906, and Chapter II of the Indian Extradition Act, 1903.
(*b*) to States where they do not apply.	The Indian Extradition Act, 1903.
2. *British Possessions.*	The Fugitive Offenders Act, 1881, and Chapter IV of the Indian Extradition Act, 1903.

Recapture of fugitive offenders from British India.

10. It is obvious that the converse of the rendition of fugitive offenders from British India is the surrender to the British Indian authorities of offenders who have fled to other parts of the world. Although this is largely a matter for administrative rather than legal consideration, a short chapter has been added dealing with this question as it may be convenient to draw attention to the main features of the procedure in order to prevent officers from falling into mistakes which may lead to great inconvenience and delay.

Object of book.

11. The object of this work is to afford assistance to those officers of Government and others in remote places who are not provided with the ordinary works of reference and for whom the construction of this branch of the law must necessarily present great difficulties. Those who have within reach books of reference will doubtless consult—and prefer to rely on—the well-known works on the subject, without which it is obvious that this book could not have been written.