

Laws of Her Majesty's Province of Upper Canada, passed in the year 1849. Montreal: Stewart Derbishire & George Desbarats, 1849.

12 Victoria – Chapter 19

An Act for better giving effect, within this Province, to a Treaty between Her Majesty and the United States of America, for the apprehension and surrender of certain Offenders. 30th May, 1849.

Whereas by the tenth article of a Treaty between Her Majesty and the United States of America, signed at Washington on the Ninth day of August, in the year one thousand eight hundred and forty-two, the ratifications whereof were exchanged at London, on the Thirtieth day of October, in the same year, it was agreed that Her Majesty and the said United States, should, upon mutual requisitions 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 Assault with intent to commit 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 an Asylum or should be found within the Territories of the other; provided that this should only be done upon such evidence of criminality as according to the Laws of the place where the fugitive or person so charged should be found, would justify his apprehension and commitment for trial if the crime or offence had been there committed; and that the respective Judges and other Magistrates of the two Governments should have power, jurisdiction and authority, upon complaint made under oath, to issue a Warrant for the apprehension of the fugitive or person so charged, so that he might be brought before such Judges or other Magistrates respectively, to the end that the evidence of criminality might be heard and considered, and if on such hearing the evidence should be deemed sufficient to sustain the charge, it should be the duty of the examining Judge or Magistrate to certify the same to the proper Executive Authority, that a Warrant might issue for the surrender of such fugitive, and that the expense of such apprehension and delivery should be borne and defrayed by the party making the requisition and receiving the fugitive; and it is by the eleventh article of the said Treaty further agreed, that the tenth article hereinbefore recited should continue in force until one or other of the High Contracting Parties should signify its wish to terminate it, and no longer: And whereas certain provisions of the Act passed by the Parliament of the United Kingdom of Great Britain and Ireland, in the Session held in the sixth and seventh years of Her Majesty's Reign for giving effect to the Treaty aforesaid, and intituled, *An Act for giving effect to a Treaty between Her Majesty and the United States of America, for the apprehension of certain Offenders*, have been found inconvenient in practice in this Province, and more especially that provision which requires that before any such offender as aforesaid shall be arrested, a Warrant shall issue under the Hand and Seal of the person administering the Government, to signify that such requisition as aforesaid hath been made by the authority of the United States for the delivery of such offender as aforesaid, and to require all Justices of the Peace, and other Magistrates and Officers of Justice, within their several jurisdictions, to govern themselves accordingly, and to aid in apprehending the person so accused, and committing such person to Gaol for the purpose of being delivered up to justice according to the provisions of the said Treaty, inasmuch as by the delay occasioned by compliance with the said provision, an offender may have

time afforded him for eluding pursuit: And whereas by the fifth section of the said Act it is enacted, that if by any Law or Ordinance to be thereafter made by the local Legislature of any British Colony or Possession abroad, provision shall be made for carrying into complete effect within such Colony or Possession, the objects of the said Act, by the substitution of some other enactment in lieu thereof, then it shall be competent to Her Majesty, with the advice of Her Privy Council (if to Her Majesty in Council it shall seem meet, but not otherwise) to suspend the operation within any such Colony or Possession of the said Act of the said Imperial Parliament, so long as such substituted enactment shall continue in force there, and no longer: And whereas it is expedient to make provision for carrying the objects of the said Act and Treaty into complete effect within this Province, by the substitution of other enactments in lieu of the said Imperial Act: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, and intituled, *An Act to re-unite the Provinces of Upper and Lower-Canada, and for the Government of Canada*; and it is hereby enacted by the authority of the same, That it shall be lawful for any of the Judges of, ally of Her Majesty's Superior Courts in this Province, or for any of Her Majesty's Justices of the Peace in the same, and they are hereby severally vested with power, jurisdiction and authority, upon complaint made under oath or affirmation, charging any person found within the limits of this Province with having committed, within the jurisdiction of the United States of America, or of any of such States, any of the crimes enumerated or provided for by the said Treaty, to issue his Warrant for, the apprehension of the person so charged, that he may be brought before such Judge or such Justice of the Peace, to the end that the evidence of criminality, may be heard and considered; and if, on such hearing, the evidence be deemed sufficient: by him to sustain the charge according to the laws, of this Province, if the offence alleged had been committed therein, it shall be his duty to certify the same, together with a copy of all the testimony taken before him, to the Governor or Lieutenant-Governor of this Province, or to the Person administering the Government of the same for the time being, that a Warrant may issue, upon the requisition of the proper authorities of the said United States or of any: of such States, for the surrender of such person, according to the stipulations of the said Treaty; and it shall be the duty of the said Judge or of the said Justice of the Peace to issue his Warrant for the commitment of the person so charged to the proper Gaol, there to remain until such surrender shall be made, or until such person shall be discharged according to law.

II. Provided always, and be it enacted, That in every case of complaint as aforesaid, and of a hearing upon the return of the Warrant of Arrest, copies of the depositions upon which an original Warrant in any of the said United States may have been granted, certified under the hand of the person or persons issuing such Warrant, or under the hand of the Officer or person having the legal custody thereof, and attested upon the oath of the party producing them to be true copies of the original depositions, may be received in evidence of the criminality of the person so apprehended.

III. And be it enacted, That it shall be lawful for the Governor or Lieutenant-Governor of this Province, or the person administering the Government of the same for the time being, upon a

requisition made as aforesaid by the authority of the said United States or of any of such States, by Warrant under his hand and seal, to order the person so committed to be delivered to such person or persons as shall be authorized in the name and on the behalf of the said United States or of any of such States, to be tried for the crime of which such person shall be so accused, and such person shall be delivered up accordingly; and it shall be lawful for the person or persons authorized as aforesaid, to hold such person in custody, and to take him or her to the territories of the said United States, pursuant to the said Treaty; and if the person so accused shall escape out of any custody to which he or she shall be committed, or to which he or she shall be delivered as aforesaid, it shall be lawful to retake such person, in the same manner as any person accused of any crime against the laws of this Province, may be retaken upon an escape.

IV. And be it enacted, That when any person who shall have been committed under this Act and the Treaty aforesaid, to remain until delivered up in pursuance of a requisition as aforesaid, shall not be delivered up pursuant thereto, and conveyed out of this Province within two calendar months after such commitment, over and above the time actually required to convey the prisoner from the Gaol to which he or she may have been committed, by the readiest way out of this Province, it shall in every such case, be lawful for any of the Judges of Her Majesty's Superior Courts in this Province, having power to grant a Writ of *Habeas Corpus*, upon application made to him or them by or on behalf of the person so committed, and upon proof made to him or them that reasonable notice of the intention to make such application has been given to the Provincial Secretary, to order the person so committed to be discharged out of custody, unless sufficient cause shall be shewn to such Judge or Judges why such discharge shall not be ordered.

V. And be it enacted, That this Act shall come into force upon the day to be appointed for that purpose in any Proclamation to be issued by the Governor, Lieutenant-Governor, or Person Administering the Government of this Province, for the purpose of promulgating any Order of Her Majesty with the advice of Her Privy Council suspending the operation of the Imperial Act hereinbefore cited within this Province, and not before, and shall thereafter continue in force during the continuance of the tenth article of the said Treaty, and no longer.