

ad N^o 6516. (1896.)

FOREIGN OFFICE,

June 12 1896.

Sir:-

I have considered, in consultation with Her Majesty's Secretary of State for the Home Department your note of the 22nd of February last, respecting the proposed new Extradition Treaty between Great Britain and the Netherlands, and I have now the honour to submit to you the following observations, for the consideration of the Netherland Government.

Article II No.7.

Her Majesty's Government agree to the substitution of the word "or" for the word "and".

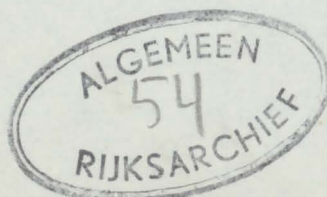
Article II No.11.

It is necessary that the crimes mentioned in the English text of this number should be inserted in the Treaty. Although the crime of "embezzlement" is comprised in the word "verduistering", this

latter

Baron Goltstein.

&c., &c., &c.,



latter word is much more extensive than the word "embezzlement", and includes crimes which would not come within the legal crime of "embezzlement". Every "embezzlement" is a "verduistering", but there are many "verduisterings" which are not "embezzlements", for example, all the crimes mentioned in No. 11.

Her Majesty's Government see no objection to numbers 7 and 11 being included in one number, an amendment which they understand would be acceptable to the Netherland Government. The English text of the combined number would be "embezzlement, fraud by a bailee, banker, agent, factor, trustee, or director or member or public officer of any Company, made criminal by any law for the time being in force, or larceny".

The meaning of the legal term "fraud" in number 11 is best expressed by the English word "dishonesty".

Article X.

Article X.

The procedure contemplated in this Article as now drafted appears to Her Majesty's Government to be not altogether free from doubt, and they would suggest the substitution for the present Article of an Article in the following words:-

"Pending the presentation of the demand for extradition through the diplomatic channel, a fugitive criminal may be apprehended under a warrant issued by any Police Magistrate, Justice of the Peace, or other 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 Magistrate, Justice of the Peace, or other competent authority exercises jurisdiction; provided, however, that in the United

"Kingdom

"Kingdom the accused shall, in such case be sent
"as speedily as possible before a magistrate.

"He shall, in accordance with this Article,
be discharged, as well in the *Netherlands*
as in the United Kingdom, if within the term of
thirty 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 XIII.

Her Majesty's Government suggest that the
first paragraph of this Article should be made to
correspond with the first paragraph of Article XII
by inserting the words "dominions of the" before

the

the word "Netherlands". This paragraph would,
moreover, appear to require further amendment; un-
less by the words "the officer of justice" is meant
some officer of the Netherland Government whose
duty it is to carry into effect an application for
extradition. If, however, that should be the
case, it is not clear what is meant by the "requi-
sition" and the "authority for that purpose" men-
tioned in the same paragraph. Her Majesty's Govern-
ment would be glad to be favoured with an explana-
tion on this point.

The third paragraph of Article XIII will, in
the opinion of Her Majesty's Government, require
to be entirely recast; for, among other reasons,
the evidence indispensable before extradition is
granted, is not stated. It is necessary that
provision should be made for the supply of evidence
to the Netherland authorities, and for its con-
sideration by them in determining whether the ex-
tradition is to be granted, or not.

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The first part of this paragraph refers to convictions, and I would observe that, according to English law, there is no such thing as a conviction "par contumace". A "sentence of condemnation" would not improperly express a conviction after a trial before a jury when the person charged and convicted was present, but as the word "conviction" is used in Article XIV it would be better to use the same word in this Article.

In the second part of the same paragraph the following words occur - "of an order finding the indictment or remitting the case to a Criminal Court, accompanied by a warrant of arrest". An indictment according to English law is for the most part only found after a committal for trial; but it is understood that the words "remitting the case to a Criminal Court" refer to sending a case for trial. An accused person is, however, never in his absence committed for trial, nor is he so committed until there is sufficient evidence

taken

taken in his presence on which to send him for trial.

Extradition of a fugitive is demanded when depositions or statements upon oath have been taken sufficient to justify his being sent for trial if he had been present, and the papers which are the foundation of the demand for extradition are (1) the warrant of arrest, and (2) depositions or statements upon oath furnishing such evidence as, according to the laws of the country upon which the demand is made, would justify the arrest of the fugitive if the crime had been committed within the jurisdiction of that country.

Her Majesty's Government deprecate the insertion of the words at the end of this paragraph "ainsi que la disposition pénale qui lui est applicable", particularly when they are held to mean as stated in your note, "the clause of the Act of Parliament dealing with the crime in question". In extradition cases the matter must always be governed

governed by the evidence given by the country demanding the extradition, and this must be sufficient to justify the arrest according to the law of the country where the accused is found, and to shew that the offence is an extradition offence within the Treaty. In the opinion of Her Majesty's Government it is entirely immaterial whether the offence in question is an offence by statute in England, or by common law; or, if an offence provided for by statute, under what statute or section the accused is charged. By English law, after extradition, the accused cannot be tried for any offence committed prior to the surrender in any part of Her Majesty's dominions other than for such of the said crimes shown to exist by the evidence

Great confusion would arise if the country granting the extradition were to enquire into the law of the country demanding it; and Her Majesty's Government trust that this suggestion will not be

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pressed by the Government of the Netherlands,

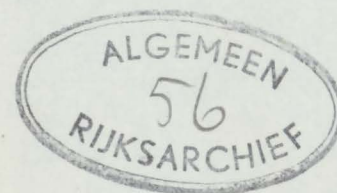
In view of the above considerations, Her Majesty's Government think that the third and fourth paragraphs of Article XIII should be remodelled, and brought into accord with Article XII of the proposed Treaty; and they would suggest that the combined paragraphs should run as follows:-

The extradition shall only be granted on the production, either in original or in authenticated copy--

(1) Of a conviction; or,

(2) (a) Of a warrant of arrest (which, by the law of the British dominions, is the only document which is granted when it is adjudged upon evidence taken on oath that the accused ought to be taken into custody) issued in the form prescribed by British legislation, and indicating the offence in question sufficiently to enable the Netherland Government to decide whether it constitutes, in contemplation of Netherland law, a case provided

for



for by the present Treaty; and,

(b) Of the evidence.

In the examinations which they have to make in accordance with the foregoing stipulations, the authorities of the Netherland dominions shall admit as valid evidence depositions or statements on oath, or the affirmations of witnesses taken in the British dominions, 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 British dominions.

2. Depositions or affirmations, or the copies thereof, must purport to be certified under the hand of a Judge, Magistrate, or officer of the British dominions, to be the original depositions or affirmations, or to be the true copies thereof,

as

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 British dominions.

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 one of the Principal Secretaries of State, or some other Minister of State of the British dominions, but any other mode of authentication for the time being permitted by law in that part of the dominions of the Netherlands where the examination is taken may be substituted for the foregoing.

The words inserted in the proposed paragraph as to the effect of the proposed warrant are rendered necessary by Section II of the Netherland Code as to foreigners.

I have the honour to be,
with the highest consideration, Sir,
Your most obedient,
humble Servant,

Schilling