

C.A. to conceive why they did not use the words "lopping and top-
 1891 ping," which words in conjunction so readily occur to one's mind
 in connection with the cutting of trees. I think that the word
 UNWIN "lopping" must have its ordinary meaning as used in country
 v. life. The appeal must be allowed.
 HANSON.

Appeal allowed. (1)

Solicitor for appellant: *Godfrey H. Pownall.*

Solicitor for respondent: *A. Lawrence Houlder.*

W. A.

Feb. 23, 24,
 26.

IN RE BELLENCONTRE.

*Criminal Law—Extradition—Embezzlement or Misappropriation as a Notary—
 Fraud by a Bailee—Fraud as an Agent—Sufficiency of Warrants of
 Arrest and Committal—Attorney or Agent intrusted with Money for safe
 Custody—Extradition Treaty with France, Article 3, Clause 18—French
 Penal Code, Article 408—24 & 25 Vict. c. 96, ss. 75, 76—33 & 34 Vict.
 c. 52.*

In order to justify the extradition of the subject of a foreign state, there must be evidence of an act committed by him in the foreign country, amounting to an offence against the law of such country, and which if committed in England, would amount to an offence against English law.

A warrant was issued in France for the arrest of a French subject, accused of having embezzled or misappropriated money delivered to him in his capacity of notary. He escaped from France, and was arrested in English territory, and his extradition was demanded by the French authorities. A magistrate committed him for extradition on a warrant describing him as accused of the crime of fraud by a bailee and fraud as an agent. The French warrant specified nineteen separate charges. On an application for a habeas corpus, the Court came to the conclusion that as to fifteen of the charges, the evidence disclosed no crime punishable by English law. With regard to the other four charges, there was evidence that in each case money was intrusted, without any direction in writing, to the prisoner as a notary, with a view to re-investment as soon as either he or his customer should have found a suitable investment, and that he had misappropriated such money:—

Held, that the offences charged were sufficiently described, both in the French and in the English warrant, and that the warrants were consistent with each other; that the fact that, as to some of the charges in the French warrant, the evidence did not disclose any crime against English law, was no answer to the claim for extradition; that as to the four charges last above-mentioned, there was evidence of offences within the meaning of article 408 of the French

(1) The Court of Appeal desired to what judgment should be entered for
 consult Pollock, B., before stating the plaintiff.

Penal Code, and article 3, clause 18, of the Extradition Treaty, and evidence that the prisoner had been intrusted as an attorney or agent with money for safe custody within the meaning of 24 & 25 Vict. c. 96, s. 76, and therefore there was evidence of offences against English law, and extradition ought to be granted :

Held, that there was no evidence of offences against 24 & 25 Vict. c. 96, s. 75, because the first part of that section requires that the money should have been intrusted with a direction in writing, and the second part does not apply to money.

A RULE NISI had been obtained on behalf of David Henri Bellencontre, a French subject, for a habeas corpus to bring up his body in order that he might be discharged from custody.

The prisoner had been committed for extradition, by Sir John Bridge, the chief magistrate at Bow Street Police Court, under a warrant, a copy of which is set out below. His extradition was demanded by the French authorities on nineteen separate and distinct charges, but as the Court, after considering the whole of the evidence, arrived at the conclusion that as to four only of the charges specified in the French warrant of arrest, numbers 3, 4, 17 and 18, the evidence set out disclosed crimes punishable by English law, with regard to which extradition could be granted, the portions of the French warrant, and the depositions relating to the remaining fifteen charges, are omitted.

The following is a translation of the French warrant of arrest, so far as it relates to the charges as to which the Court decided that extradition could rightly be demanded.

“ In the Name of the Law.

“ *Warrant of Arrest.*

“ The Juge d’Instruction of the Civil Tribunal at Bayeux, has issued the Warrant which follows :

“ We Duc Michel Arthur, Juge d’Instruction of the district of Bayeux, require and order the apprehension and conveyance to the House of Arrest, of one David Henri Bellencontre Notary Accused of having at Tour, Calvados

“ (3.) Since 7th October, 1889, and 13th June, 1890, embezzled or misappropriated, to the injury of one M. Malassis, certain sums of money which had been delivered to him in his capacity of Notary.

“ (4.) Since January, 1890, embezzled or misappropriated to

1891

IN RE
BELLEN-
CONTRE.

1891

 IN RE
 BELLEN-
 CONTRE.

the injury of one M. Lefortier, a certain sum of money which had been delivered to him in his capacity of Notary

“ (17.) Since 25th June, 1890, embezzled or misappropriated to the injury of Madame Verdelet Lamare a certain sum of money which had been delivered to him in his capacity of Notary.

“ (18.) Since 25th June, 1890, embezzled or misappropriated to the injury of Madame Brunet née Guilbert, a certain sum of money which had been delivered to him in his capacity of Notary . . . ”

Crimes provided for and punished by Article 408 of the Penal Code, which is thus conceived :

“ Whoever shall have embezzled or misappropriated to the injury of the owners, possessors, or holders any effects, moneys, goods, bills, receipts, or other writings containing or operating in obligation or discharge, which shall have been delivered to him only by right of hire of deposit, under writ, security, loan at interest, or for a work salaried or not salaried, upon the condition to return them or to employ them for a specific purpose, will be punished with the penalty prescribed in art. 406.

“ If the fraud provided against and punished by the preceding paragraph has been committed by an officer, public or ministerial, or by a servant, or man employed in service at wages, pupil, clerk, traveller, workman, companion, or apprentice, to the injury of his master, the penalty will be that of reclusion. . . .

“ We require and order all officers to whom the present warrant may be exhibited to lend main force if necessary towards its execution.

“ And the Keeper of the House of Arrest at Bayeux to receive the prisoner conformably to law.

“ In witness, &c. Done at Bayeux, December 11, 1890.

“ (Signed) A. Duc.”

By the extradition treaty with France, art. 3, clause 18, one of the crimes for which extradition is to be granted is defined thus : “ Abus de confiance, ou détournement par un banquier, commissionnaire, administrateur, tuteur, curateur, liquidateur, syndic, officier ministériel, directeur, membre ou employé d’une société, ou par toute autre personne.” (1)

(1) See *London Gazette*, May 21,
1878, p. 3163.

By 24 & 25 Vict. c. 96 :—

“ Sect. 75. Whosoever, having been

The following is the requisition signed by the Home Secretary:—

“To the Chief Magistrate of the Metropolitan Police Courts, or other magistrate of the Metropolitan Police Court at Bow Street.

“Whereas in pursuance of the Extradition Acts of 1870 and

intrusted, either solely, or jointly with any other person, as a banker, merchant, broker, attorney, or other agent, with any money or security for the payment of money, with any direction in writing to apply, pay, or deliver such money or security or any part thereof respectively, or the proceeds or any part of the proceeds of such security, for any purpose, or to any person specified in such direction, shall, in violation of good faith, and contrary to the terms of such direction, in anywise convert to his own use or benefit, or the use or benefit of any person other than the person by whom he shall have been so intrusted, such money, security, or proceeds, or any part thereof respectively, and whosoever having been intrusted, either solely or jointly with any other person, as a banker, merchant, broker, attorney, or other agent, with any chattel or valuable security, or any power of attorney for the sale or transfer of any share or interest in any public stock or fund, whether of the United Kingdom, or any part thereof, or of any foreign state, or in any stock or fund of any body corporate, company, or society for safe custody or for any special purpose, without any authority to sell, negotiate, transfer, or pledge, shall in violation of good faith, and contrary to the object or purpose for which such chattel, security, or power of attorney shall have been intrusted to him, sell, negotiate, transfer, pledge, or in any manner convert to his own use or benefit, or the

use or benefit of any person other than the person by whom he shall have been so intrusted, such chattel or security or the proceeds of the same, or any part thereof, or the share or interest in the stock or fund to which such power of attorney shall relate, or any part thereof, shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for any term not exceeding seven years and not less than five years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement; but nothing in this section contained relating to agents shall affect any trustee in or under any instrument whatsoever, or any mortgagee of any property, real or personal, in respect of any act done by such trustee or mortgagee in relation to the property comprised in or affected by any such trust or mortgage, nor shall restrain any banker, merchant, broker, attorney, or other agent from receiving any money which shall be or become actually due and payable upon or by virtue of any valuable security, according to the tenor and effect thereof, in such manner as he might have done if this act had not been passed; nor from selling, transferring, or otherwise disposing of any securities or effects in his possession upon which he shall have any lien, claim, or demand entitling him by law so to do, unless such sale, transfer, or other disposal shall extend to a

1891

IN RE
BELLEN-
CONTRE.

1891

 IN RE
 BELLEN-
 CONTRE.

1873 a requisition has been made to me the Right Honourable Henry Matthews, one of Her Majesty's Principal Secretaries of State, by M. Waddington, the Diplomatic Representative of the French Republic, for the surrender of David Henri Bellencontre accused of the commission of the crime of fraud by a bailee within the jurisdiction of the French Republic.

"Now I hereby by this my order under my hand and seal signify to you that such requisition has been made, and require you to proceed in conformity with the provisions of the said Acts.

"Given under the hand and seal of the undersigned, one of Her Majesty's Principal Secretaries of State, the 22nd of December, 1890.

[Seal, Home Office.]

"(Signed) HENRY MATTHEWS."

The following is a copy of the warrant of arrest signed by Sir John Bridge:—

"Police Court, Bow Street.

"Metropolitan Police
District to wit.

To all and every the constables of the Metropolitan Police Force, and to the Keeper of Her Majesty's Prison at Holloway, in the County of London, and within the Metropolitan Police District.

"Be it remembered that on this 22nd January, A.D. 1891, David Henri Bellencontre (hereinafter called the defendant) is brought before me the Chief Magistrate of the Metropolitan Police Courts, sitting at the Police Court in Bow Street, within the Metropolitan Police District to shew cause why he should

greater number or part of such securities or effects than shall be requisite for satisfying such lien, claim, or demand.

"76. Whoever being a banker, merchant, broker, attorney, or agent, and being intrusted either solely, or jointly with any other person, with the property of any other person for safe custody, shall, with intent to defraud, sell, negotiate, transfer, pledge, or in

any manner convert or appropriate the same or any part thereof to or for his own use or benefit, or the use or benefit of any person other than the person by whom he was so intrusted, shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the direction of the Court, to any of the punishments which the Court may award as hereinbefore last mentioned."

not be surrendered in pursuance of the Extradition Act on the ground of his being accused of the commission of the crimes of fraud by a bailee and frauds as an agent within the jurisdiction of the French Republic, and for as much as no sufficient cause has been shewn to me why he should not be surrendered in pursuance of the said Act.

"This is therefore to command you the said constable in Her Majesty's name forthwith to convey and deliver the body of the said defendant into the custody of the said Keeper of Her Majesty's Prison at Holloway, and you the said keeper to receive the said defendant into your custody, and him there safely to keep until he is thence delivered pursuant to the provisions of the said Extradition Act, for which this shall be your warrant."

The evidence on the 3rd charge in the French warrant was as follows :—

Jacques Cyrus Malassis deposed: "I had confidence in M. Bellencontre, and I left with him on deposit on the 7th October, 1889, a sum of 6000 fr. In the course of the year 1890, M. Bellencontre told me that one M. Hue, farmer at Aiquerville, had begged him to find a sum of 15,000 fr.

"He asked me if I could furnish him with a like sum to make an investment. I told him that I would endeavour to contrive to raise the necessary funds.

"On 6th June, 1890, I paid into the hands of M. Bellencontre a sum of 5000 fr. at Trevières at the Hotel Leneven. The notary delivered to me the receipt which you have in your hands. On the 13th June following I went again to Trevières, and paid into the hands of M. Bellencontre at the Hotel Leneven, a sum of 3000 fr. for which he gave me a receipt. In order to complete the sum of 15,000 fr. M. Bellencontre was to take 1000 fr. on the interest which he had to receive from several of my debtors in his office. No deed of bond has been signed by me, and in spite of my reiterated demands, M. Bellencontre has never told me the use which he has made of my 15,000 fr.

"I have learnt since that M. Bellencontre has fled, and that M. Hue was not my debtor. I fear indeed that the notary has not got my 15,000 fr."

1891

IN RE
BELLEN-
CONTRE.

1891

 IN RE
 BELLEN-
 CONTRE.

The receipts signed by Bellencontre were as follows :—

“M. Malassis pays me this day 3000 fr. for Hue investment. I will advance 1000 fr. to be received from his debtors, and with 6000 fr. deposited the 7th October last, he will have an investment of 15,000 fr.

“Trevières, June 13, 1890.”

“Received of M. Malassis the sum of 5000 fr. to be invested with M. Hue.

“Trevières, June 6, 1890.”

On June 8, 1890, Bellencontre wrote to Malassis as follows :—

“Sir,—In reply to your letter received this morning, please call on me at Trevières on Friday, and bring me your disposable funds, and we shall easily come to an understanding as to the surplus.”

Evidence on the 4th Charge.

Gustave Bassourdy, living at 35, Rue Hallé, Paris, deposed : “I had in the month of April last given power to M. Bellencontre, notary at Tour, to contract a loan amounting to the sum of 1000 fr. for me. Bellencontre remitted this power to M. Bourdon, formerly notary at Caen Place, St. Martin.

“The latter received the money from a lady client whose name I do not know. This sum has been paid me by successive fractions. This affair has been entirely liquidated. I have always on this subject manifested to M. Bellencontre my discontent as to the fees which he has believed he should retain as to the entire sum, fees amounting to an exorbitant sum. I have not contracted any loan. I do not know M. Lefortier, at Etreham, and I do not know if the latter has deposited the money in the office of M. Bellencontre.

“I am not his debtor for whatever this may be.

“If, as seems to result from the communications you make to me, a deed has been passed by M. Bellencontre, agreeing to a loan to me from M. Lefortier, it is simply a forgery.”

Pierre François Lefortier, residing at Etreham, deposed :—

“In the month of January, 1890, M. Bellencontre asked me if I could dispose of a sum of 2500 fr., for which he had an investment.

"I answered him affirmatively, and paid him the funds. On February 3, 1890, a deed of bond was drawn by which one M. Elie acknowledged himself our debtor in 2500 fr. This loan was agreed for five years. The repayment was to take place on January 12, 1895.

1891

 IN RE
BELLEN-
CONTRE.

"In the course of the month of July, 1890, I reclaimed my title from Bellencontre. He replied that Elie had repaid, and that he would find me another borrower, I returned many times afterwards to Bellencontre to know if my money was invested. Things went on thus up to the end of the month of August, at which time Bellencontre told me that he had indeed found a borrower, but that, information shewing that this borrower did not offer sufficient security, it was in our interest that he was seeking another.

"At length on September 2, 1890, I went to M. Bellencontre and demanded of him either my title or my money.

"He answered me as previously that my title was not returned from the Registry, and delivered to me a receipt for 2500 fr., adding that one borrower was a M. Bassourdy, living at Paris.

"Since that period we have heard nothing more said about it. Bellencontre has fled.

"I know not if he has remitted the funds to Bassourdy. We have not a title (deed), and I have not signed any.

"Happily for me, I made him give me a receipt for 2500 fr. on September 2 last.

"Bellencontre paid us the interest on this sum of 2500 fr. in the middle of September last.

"He owes me only the interest pro ratâ since that time."

Desiré Charles Victor Halley, formerly clerk to Bellencontre, deposed :—

"About two months ago Pierre François Lefortier, property holder, living at Etreham, came to the office of M. Bellencontre to reclaim the deeds concerning an investment made by him in the office. This investment was of 2500 fr.

"The borrower was one M. Bassourdy, living at Paris, 35 Rue Hallé. This investment I believe has not been made. I am certain that the 2500 fr. were paid into the hands of M. Bellencontre,

1891

IN RE
BELLEN-
CONTRE.

for I heard M. Bellencontre several times tell M. Lefortier that he would give him his deeds.

"Bassourdy came to Tour, to the office of M. Bellencontre, about three weeks ago. He was accompanied by a M. Albert Piquerel, property holder at Crounay, purchaser of the estates of M. Bassourdy. At this time M. Bellencontre had already gone, and we had not seen him for three days."

Evidence on Charge 17.

Arthur Jules Guilbert, farmer, living at Mosles, deposed :—

"At the death of my mother all the estates which she possessed were sold. M. Dupard, innkeeper at Port-en-Bessin, bought on June 3, 1888, divers estates situated at Crounay, for the price of 23,400 fr. The succession of my parents was represented by Mesdames Verdelet Lamare and Brunet and by me. I was to receive for my share 11,700 fr., the half. On October 1, 1888, M. Dupard made a first payment in the office of Bellencontre. The ladies, Verdelet Lamare and Brunet, and I, were present at the payment made by M. Dupard, who gave me 7700 fr. and kept a capital sum of 4000 fr. for the purpose of a "Rente" of 200 fr. to the Carel couple, hatters at Bayeux. This Rente had been imposed on it as a charge. M. Carel is dead, and when Madame Carel shall be deceased M. Dupard will pay me this capital sum of 4000 fr., and will be completely unencumbered for me.

"A notarial receipt was made on June 3, 1888, by M. Bellencontre, who signed it as well as I. I have received the 7700 fr. paid by M. Dupard, so that Bellencontre has not kept anything in his hands.

"On June 25, 1890, M. Dupard paid the balance of his price, viz., 11,700 fr. to M. Bellencontre. I was present at the payment as well as Mesdames Verdelet Lamare and Brunet. M. Dupard paid further 585 fr. for interest, which brought up his payment to 12,285 fr.

"In consequence of an arrangement made between my sister and me on the subject of a piece of land which had been sold me by my brother for 2000 fr., and which, in error, had been included in the properties bought by M. Dupard, I received of

the sum paid on June 25, 1890, by M. Dupard a sum of 1000 fr., my sisters having no right to this sum. It resulted that my sisters received only 10,700 fr., plus interest.

"A notarial receipt was drawn up the same day by Bellencontre, who signed it as well as my sisters and I. M. Dupard was then discharged as regards us.

"The 10,700 fr. accruing to my sisters half for each, was to be re-invested on account of their position as 'dotal' wives. M. Bellencontre kept the funds in order to make the re-investment. I know not if the re-investment was made."

Madeline Anne Guilbert, wife of Jean Baptiste Verdelet Lamare, deposed:—

"On the death of my mother we were to sell all the properties which she left, in order to proceed to share the succession. On June 3, 1888, M. Dupard, innkeeper at Port-en-Bessin, bought divers estates situated at Crounay for the price of 23,400 fr. The succession was represented by Madame Brunet my sister, Arthur Guilbert my brother, and me.

"Arthur Guilbert was to receive 11,700 fr., my sister and I 11,700.

"On October 1, 1888, M. Dupard made a first payment in the office of Bellencontre, my sister, my brother and I being present. Arthur Guilbert my brother received 7700 fr., for which he gave receipt. M. Dupard kept a sum of 4000 fr. in order to provide an annuity of 200 fr. to the Carel couple, hatters at Bayeaux, in execution of a clause in the list of charges.

"On June 23, 1890, M. Dupard paid in my presence, and that of my brother and sister, a sum of 11,700 fr. balance of his purchase price into the hands of M. Bellencontre. He paid besides a sum of 585 fr. for interest due, for which my sister and I gave receipt.

"In consequence of an error committed in the sale, my sister and I were obliged to restore 1000 fr. to our brother Arthur Guilbert, who received the 1000 fr., and gave a receipt for it to M. Dupard.

"The 10,700 fr. capital which remained belonged to us, my sister and me, one half each. As this capital was to be

1891

IN RE
BELLEN-
CONTRE.

1891

 IN RE
BELLEN-
CONTRE.

employed again on account of our position as 'dotal' wives, the money was deposited with M. Bellencontre.

"We were present when the money was deposited in his hands, who drew up a receipt which my sister and I signed. Bellencontre told us when receiving the money, that he would reply (1) as to the investment.

"We have indeed found a re-investment for those moneys in the office of M. Lebire, but M. Bellecontre, who was to pay the funds on the morrow of Christmas day, 1890, has taken flight eight hours after I had given him notice of the re-investment."

Victor Honoré Dupard, innkeeper, living at Port-en-Bessin, deposed:—

"On June 3, 1888, I purchased before M. Bellencontre, notary at Tour, divers estates situated at Crounay, proceeding from the Guilbert succession, represented by Mesdames Verdelet Lamare and Brunet, and by M. Arthur Guilbert.

"On October 1, 1888, I paid at Tour in the office of M. Bellencontre, notary, a sum of 7700 fr. in the presence of M. Arthur Guilbert and of Mesdames Verdelet Lamare and Brunet. A receipt was delivered to me by M. Bellencontre, notary, and the 7700 fr. which I came to pay was given to M. Arthur Guilbert. I kept a sum of 4000 fr. to provide for an annuity of 200 fr. to the Carel couple, hatters at Bayeaux. The husband died about two years ago. I kept this sum of 4000 fr. to provide for an annuity of 200 fr. to the said Carel couple, as that had been imposed by the list of charges.

"As my price of purchase was 23,400 fr., I was then discharged from half my debt. This half appertained to the share of Arthur Guilbert. A notarial deed had been drawn up by M. Bellencontre, and the receipt was signed by M. Bellencontre and M. Guilbert.

On June 25, 1890, I paid to Bellencontre the 11,700 fr. balance of my purchase money, plus 585 fr. interest. The 12,285 fr. was the share going to Mesdames Verdelet Lamare

(1) So translated in the English translation of the original French depositions used in Court. The true meaning, however, appears to be that

he was confident he should be able to find an investment, as explained by Wills, J., post, p. 144.

and Brunet. All my creditors were present. A notarial receipt was made out by Bellencontre, and signed by him and my creditors. I am, therefore, completely discharged in respect of every one."

1891

IN RE
BELLEN-
CONTRE.

Evidence on Charge 18.

Aline Marie Guilbert, wife of Jean Baptiste Brunet, deposed:—

"When my mother died we had to sell all her property in order to be able to share the succession. On June 3, 1888, M. Dupard, innkeeper at Port-en-Bessin, became purchaser of several estates situated at Crounay. His price of purchase was 23,400 fr.

"The heirs were my sister, Madame Verdelet Lamare, our brother Arthur Guilbert, and I. Arthur Guilbert, who had bought the share of our brother Francis, was to receive 11,700 fr. There came therefore to my sister and me an equal sum of 11,700 fr.

"On October 1, 1888, M. Dupard made a first payment in the office of Bellencontre. I attended there as well as my sister and my brother Arthur. Dupard paid 7700 fr., which my brother Arthur received, for which he gave a receipt. Dupard retained a sum of 4000 fr., conformably to a claim on the schedule of charges to provide for an annuity of 200 fr. to the Carel couple, hatters at Bayeux.

"On June 25, 1890, M. Dupard made a second payment in my presence, and that of my sister and of our brother Arthur. Dupard paid 11,700 fr. capital balance of the purchase money, and 585 fr. for interest due. We received the 585 fr. interest, and gave a receipt to M. Dupard. In consequence of an error committed in the adjudication, we paid to our brother Arthur a sum of 1000 fr., and he also gave a receipt for that to Dupard.

"The 10,700 fr. capital remained to be divided between my sister and me in halves. It was paid by Dupard to Bellencontre, who retained it because it was to be reinvested on account of our position as 'dotal' wives. We were all present when the capital was paid into the hands of Bellencontre. The notary drew up a receipt, and made my sister and me sign it. On

1891

IN RE
BELLEN-
CONTRE.

receiving the money, Bellencontre told me that he would answer (1) as to the reinvestment. The reinvestment of my capital was to be made in a first mortgage. I have not yet found a mode of reinvestment, but I do not know what has become of my capital, Bellencontre having taken flight. I have not seen Bellencontre again since the day when the funds were paid by Dupard."

Evidence on Charges 17 and 18.

Antoine Edmond René Lefèvre, notary, living at Bayeux, deposed:—

"On September 26 last (1890), accompanied by M. Herbert, notary at Isigny, on the summons of the president of our chamber, we repaired to the office of Bellecontre, notary at Tour, to verify certain facts that had been notified to us in our capacity of delegates.

"We required him to exhibit to us his cash book, which we balanced, and we affixed thereto our visa. We ascertained a deficit of 7271 fr. 53 cent. under the heading, funds of clients.

"We also demanded of Bellencontre to exhibit to us a sum of 10,700 fr. which he had received about the month of June last on account of Mesdames Verdelet Lamare and Brunet, nées Guilbert, and destined for a dotal reinvestment. This he has not been able to do, nor to justify that a reinvestment was made.

"We repaired on November 4 and 5 to the office of the said notary, and in view of his absence have not been able to proceed to any verification."

Feb. 23, 24. *Sir Edward Clarke, Q.C., S.-G.*, and *Henry Sutton, (Sir Richard Webster, Q.C., A.-G.*, with them), shewed cause. The objection that the French warrant does not specify offences for which extradition can be granted is disposed of by article 408 of the French Penal Code, and by the cases of *Reg. v. Jacobi* (2) and *Ex parte Piot*. (3) The English warrant is good. It substantially agrees with the French warrant, and specifies crimes

(1) See note (1), ante, p. 132.

(2) 46 L. T. (N.S.) 595, n.

(3) 48 L. T. (N.S.) 120.

according to both French and English law. It is not required, and it would be impossible, that the English warrant should be a literal translation of the French warrant. *Ex parte Terraz* (1); *Reg. v. Ganz* (2); *Reg. v. Weil*. (3) There is sufficient evidence to justify the committal and extradition of the prisoner on several of the offences specified in the French warrant. The evidence brings the case within Article 3, clause 18, of the Treaty, within Article 408 of the French Penal Code, and within 24 & 25 Vict. c. 96, s. 75 or s. 76, or perhaps within both those sections: *Reg. v. Tatlock* (4); *Reg. v. Fullagar*. (5) [They also referred to *Reg. v. Maurer* (6); *In re Castioni*. (7)]

[WILLS, J., referred to *Ex parte Lamirande*. (8)]

J. P. Grain and *Eldridge* in support of the rule. The warrants are insufficient, and the evidence does not shew any offence which comes within the Treaty of Extradition: *Reg. v. Cooper* (9); *Reg. v. Newman* (10); *In re Windsor*. (11)

There is no evidence to bring the case within either s. 75 or s. 76 of 24 & 25 Vict. c. 96, nor is anything shewn in the nature of larceny by a bailee or larceny by a trick, and it cannot be said that there has been embezzlement, for the prisoner was not in the position of a clerk or servant. Some of the charges specified in the French warrant must fail, and, as the committal appears to be on all, the failure of one will vitiate the whole warrant. [They also referred to *Reg. v. Hassall* (12); *Reg. v. Oxenham*. (13)]

Cur. adv. vult.

Feb. 26. The following judgments were delivered:—

CAVE, J. In this case the Solicitor-General and Mr. Sutton shewed cause against a rule nisi for a habeas corpus which had been obtained on behalf of David Henri Bellencontre on the

(1) 4 Ex. D. 63.

(2) 9 Q. B. D. 93.

(3) 9 Q. B. D. 701.

(4) 2 Q. B. D. 157.

(5) 41 L. T. (N.S.) 448.

(6) 10 Q. B. D. 513.

(7) [1891] 1 Q. B. 149.

(8) 10 Lower Canada Jurist., 280;

Clarke on Extradition, 3rd ed. p. 113, and Appendix cclii.

(9) Law Rep. 2 C. C. 123.

(10) 8 Q. B. D. 706.

(11) 6 B. & S. 522.

(12) L. & C. 58; 30 L. J. (M.C.)

175.

(13) 46 L. J. (M.C.) 125.

1891

IN RE
BELLEN-
CONTRE.

Cave, J.

ground that he had not committed any extradition crime for which he could be delivered over for trial to the authorities in France. Substantially two points were made on his behalf; the one technical, the other substantial. The first or technical point had reference to the form of the French warrant, the warrant of the Secretary of State, and the warrant of Sir John Bridge; and it was contended that they or some of them were not in the proper form. I am of opinion that there is nothing in that ground of objection. When one comes to look at the French warrant it appears to me to state an offence within No. 18 of the crimes for which extradition is to be granted. It states in effect that the prisoner was in nineteen cases guilty of an abuse of confidence and of fraudulent misappropriation of the property which had been deposited with him in his character of a notary. That seems to me a sufficient statement of an offence under No. 18 of the Extradition Treaty. The warrant of the Secretary of State only translates that into the corresponding English provision of the same article, and describes the charge as one of fraud by a bailee. That no doubt is somewhat wider than the statement in the French warrant, which specifies fraudulent misappropriation by a notary who has been intrusted with the property, but I see no objection to it on the ground of its being wider. The duty of the Secretary of State is to call the attention of the police magistrate to what he is required to do under the Extradition Treaty, and it is enough if he draws attention to the particular crime under the 3rd article of the Extradition Treaty, and that is fraud by a bailee, which expresses in general terms what is expressed rather more specifically in the French warrant. The warrant of Sir John Bridge seems to me also perfectly good. "Fraud by a bailee" is a term used in No. 18, and it is for the magistrate to inquire whether the evidence laid before him shews an offence of "fraud by a bailee" of such a nature as would be cognisable in an English court of justice. Now, in order to do that, he has to consider the law in respect of frauds by bailees and the evidence which is produced before him, and he arrives at the conclusion that there is evidence of a fraud by a bailee who is an agent of the party. Although it might not be sufficient to convict any bailee in an English

court of justice, it is sufficient for the purpose when the bailee who is charged is an agent. It seems to me that is a very proper mode of expressing the result of the inquiry, and that there is no ground for saying that there is any technical informality in any of these warrants which would justify us in discharging the prisoner.

Then we come to the substantial point, which is that the evidence which was laid before Sir John Bridge was not sufficient to have satisfied him that a crime punishable by English law had been committed by Bellencontre. Now, when one comes to deal with that point, one is at once struck with the superiority of the French criminal law over our own. We find there a perfectly clear and comprehensive definition of the offence which is made punishable. It is abuse of confidence or fraudulent misappropriation by any person who has been intrusted with property, a wide and general definition which embraces undoubtedly a good deal more than is expressed by our law on the same subject. Our law, unfortunately, instead of being in the form of a code, or even of a well-drawn Consolidation Act, is a thing of shreds and patches, and one has to look to different portions of the statute law in order to see to what extent a person who has been intrusted with property is made responsible for the fraudulent misappropriation of it.

Now, we find that law, as I have said, in different parts of our statute law. In the case of a bailee—in the case, that is to say, of all bailees—they are made responsible where the article which they have been intrusted with is one which they are to return or to deliver to somebody else in specie, but they are not made responsible where they are at liberty, or are bound, to convert the particular article delivered to them into something else before they return it or deliver it to the other persons to whom they are instructed to deliver it. Now that being the case, the charge against Bellencontre did not prove an offence of that nature. Therefore that particular provision of our law is out of the question.

Then there are two sections in the Act of 1861, which deals with crimes against property (24 & 25 Vict. c. 96), namely, ss. 75 and 76, which also contain provisions for the punishment of

1891

IN RE
BELLEN-
CONTRE.

Cave, J.

1891

IN RE
BELLEN-
CONTRE.

Cave, J.

fraudulent bailees in certain cases and of fraudulent bailees of particular kinds. Where a man is a bailee of a particular kind—a banker, a merchant, an agent or a factor—and receives property with written instructions how he is to dispose of it, and he misappropriates that property, then under s. 75 he is punishable; but our law requires, what the French law does not require, written instructions, and therefore the first part of that section is not applicable to the present case. There is the second part of the section which is also not applicable, because it excludes money which was the subject-matter of the offences committed by Bellencontre in this case. That brings us to s. 76, which is the last provision of the statute law having any application to a case of that kind, and by that section bailees of a certain specified description, bankers, agents and other people are made punishable when they receive property for safe custody and misapply it. That, again, is obviously very much narrower than the French offence, because, in the first place, it applies, not to all bailees, but only to bailees of the kind there specified, and whether the specification is sufficiently wide to include all bailees I should prefer not to say, because it is impossible to know what circumstances may subsequently arise which may turn out, although they are cases of bailees, not to be included in the specified kinds of bailees here referred to. Not only in that respect may there be a difference, but there obviously is another very important difference between the French law and the English law in this respect, that by our law the property must have been intrusted to the particular bailee for safe custody. If it is intrusted to him for any purpose other than that special purpose, then the selling or parting with the goods or transferring the property is no longer an offence within s. 76. Therefore, as I have said, it follows that our criminal law is very much narrower on those points, and far less clear, than the law of France is. It is fenced round with exceptions, which make it somewhat difficult at times to apply it. We have, therefore, to see whether the facts laid before the magistrate justified him in coming to the conclusion that there was a *prima facie* case made out of an offence against the English law. Now, for that reason I have gone, with the assistance of my learned brother, carefully through the nineteen different cases which have

been made against Bellencontre, and I find that with regard to the third, the fourth, the seventeenth and eighteenth cases, there is *primâ facie* evidence of the commission of a crime against the English law, or what would be a crime by English law. Of course, it does not follow that because there is *primâ facie* evidence to that effect the prisoner will necessarily be convicted of it. That will be a question for the tribunal by which he will have to be tried; but all that is necessary for the magistrate here to be satisfied of is that there is such evidence as would warrant him in committing the prisoner for trial in an English Court of justice, if what he did had been done in this country. It appears to me, having regard to those four cases, that there is the necessary amount of evidence, and, consequently, as to those four, he would be rightly extradited for the purpose of being tried in France. That being so, it follows to my mind that the warrant is good, and that, consequently, the writ of habeas corpus ought not to go. Two objections have been raised by Mr. Grain, about which I should like to say a word, and one is that the term made use of in the French warrant is *embezzlement*. Now, in the first place, that is not the term used in the French warrant: that is the term made use of to translate it. It might with equal propriety be translated as *fraudulent misappropriation*, and then the point made by Mr. Grain would not arise. That point was that *embezzlement* in our law means *misappropriation* of money by a clerk or servant. *Embezzlement* does not mean that *misappropriation* by a clerk or servant is the only species of *embezzlement* to which the law actually gives that name, and so it is to be regarded as if that were the only subject-matter to which the term *embezzlement* could be applied; but in my judgment that is not so: *embezzlement* means nothing more nor less than a *fraudulent misappropriation*, and although it is called *embezzlement* where it is committed by a clerk or servant, because it is only in that case that it is made punishable under that name, yet the thing actually exists in other cases than those of a clerk and servant, and is made punishable in the case of a banker, merchant, factor, or agent by those sections of the Act of 1861, to which I have referred. Another point which was taken was that, inasmuch as Sir John Bridge has committed the

1891

IN RE
BELLEN-
CONTRE.
—
Cave, J.

1891

IN RE
BELLEN-
CONTRE.

CAVE, J.

prisoner upon all of these charges, therefore, the warrant not being good as to all of them, it is bad as to all. That is a point which I am unable to understand. There is a committal of the prisoner upon a warrant which describes him as having been guilty of frauds as a bailee and of frauds as an agent. It does not specify upon which of those offences the evidence had satisfied Sir John Bridge. I think it is fair to assume in the absence of anything to the contrary, that it may have satisfied him upon all. If it did satisfy him upon all, then to that extent it seems to me that he was wrong, that there was no evidence that should have satisfied him except in the four cases that I have named. But the only object of specifying those cases is in order to give the prisoner the right, if he wishes to make use of it, to object to being tried in France for those other offences—for the other fifteen—on the ground that those are not in themselves crimes for which he could have been extradited. That objection he will have the opportunity of taking; but I do not see that there is any reason why the warrant, which is in perfectly general terms, is not to be held by us to be good in respect of those cases as to which there is sufficient *primâ facie* evidence to go upon. For that reason it seems to me that this technical objection, like the others, fails, and that consequently the rule ought to be discharged.

WILLS, J. I am of the same opinion. As to the technical objections which have been referred to, there seems to be really nothing in them, and I do not think they are worth serious discussion. The substance of the Extradition Act, 33 & 34 Vict. c. 52, seems to me to require that the person whose extradition is sought should have been accused in a foreign country of something which is a crime by English law, and that there should be a *primâ facie* case made out that he is guilty of a crime under the foreign law, and also of a crime under English law. If those conditions are satisfied, the extradition ought to be granted. We cannot expect that the definitions or descriptions of the crime when translated into the language of the two countries respectively, should exactly correspond. The definitions may have grown up under widely different circumstances

in the two countries; and if an exact correspondence were required in mere matter of definition, probably there would be great difficulty in laying down what crimes could be made the subjects of extradition. Now this difficulty has been met, as it seems to me, by the first schedule to the Extradition Act, 1870 (33 & 34 Vict. c. 52), which describes what are the various extradition crimes. In this case, the man has been accused of a number of things which clearly fall within article 408 of the French Code, and therefore are crimes in France, and crimes which clearly fall under number 18 in the French part of the Treaty of Extradition. One looks, then, to see whether in the corresponding English section, No. 18 of article 3, there is a crime described by English law which crime has been made out by the evidence. It seems to me that there is no difficulty in saying which of the definitions it falls under. It is either fraud by a bailee or an agent, made criminal by an Act in force in England. I cannot help saying that I share a certain feeling of humiliation which my learned brother has expressed, when one is obliged to confess formally to a neighbouring country that a great part of the atrocious things which have been done by this man, if the evidence is to be relied upon, are not punishable by English law. It does seem an extraordinary thing that a man being intrusted with money by other people for investment should be able to put it into his own pocket fraudulently and dishonestly, and yet commit no crime punishable by English law. I am reminded of a circumstance that was mentioned to me some time ago by a friend very greatly versed in the English criminal law. In the course of his studies he made out a list of the iniquitous things which could be done by the English law, without bringing the man under any provision of the common or statute law, and he had had it in his mind at one time to publish it, to shew how defective the law was, but he forbore on grounds of public policy to call attention to what people might do without rendering themselves liable to punishment. Certainly we have a very signal illustration of it with regard to the particular classes of fraud established in this case. But fortunately we have s. 76 of the Act, 24 & 25 Vict. c. 96, which provides that whoever being, amongst other

1891

IN RE
BELLEN-
CONTRE.
—
Wills, J.

1891

 IN RE
 BELLEN-
 CONTRE.

 Wills, J.

things, an attorney or agent, and intrusted with the property of any other person for safe custody, shall commit certain frauds in respect of it shall be punishable. There is no doubt that Bellencontre answered this description of an attorney or agent as nearly as a person carrying on business in France could. There is no doubt also that he was intrusted with property within the meaning of that section, because he was intrusted with money, and the definition clause (24 & 25 Vict. c. 96, s. 1) makes money a portion of the articles which are comprehended under property. There is no doubt also that there is evidence that with intent to defraud he appropriated that money to his own use.

Then one question remains, was he intrusted with the money for safe custody? This section deals with property of every description, and money is probably the most important and the most common subject in respect of which frauds of this kind are carried out, so I cannot for a moment doubt that the section was meant to have a real and substantial operation with regard to money, and with regard to money that was intrusted to, amongst other people, merchants, brokers, attorneys, or agents. Now, to hold, as has been suggested, that the section applies only to money which is put into a bag and given to a man to keep in a drawer would be, to my mind, simply a *reductio ad absurdum*, because in the business of this and every other civilised country no such process as that ever takes place; and the probability is that if a man did keep money intrusted to him for safe custody in that way it would be said, if he lost the money, that he had not taken reasonable means to secure its custody. I cannot doubt that it is fully within the meaning of the Act, if the money is intrusted to him under circumstances which would make it his duty to pay it to a special account with a bank, or to keep it in any other reasonable way in which men of business ordinarily keep their money, so as to have, not the specific coins, but the equivalents, at call when demanded. It seems to me that *Reg. v. Fullagar* (1) is absolutely on all-fours with some portion of the present case in that respect, because there the money which was held to be the subject of safe custody in the hands of the solicitor who received it, was paid over to him on

(1) 41 L. T. (N.S.) 448.

behalf of a client to whom he wrote announcing that he had it, and asking for instructions for investment. He received answers which clearly contemplated future investment, but which also contemplated that the client could interfere further by giving directions as to investment on being consulted before the investment was actually made. Under those circumstances the Court held, without any hesitation, that it had been intrusted to him for safe custody. In the present instance, in numbers 3 and 4, which my learned brother has dealt with, my opinion, and I believe his, is that with regard to the sums of 6000 fr. and 2500 fr. respectively, there is evidence (we do not say conclusive evidence, but there is evidence) that the 6000 fr. was originally, and the 2500 fr. after repayment by Elie, intrusted, not for investment, but for safe custody, and that there had been no change of the circumstances under which either sum was so held; therefore, they seem to us to fall within the principle of *Reg. v. Fullagar*. (1) With regard to the other two charges (numbers 17 and 18), the case of the Guilberts, the two sisters for whom this man had received a sum of money of about 11,000 fr., which belonged in moieties to each of them, but as to which, inasmuch as the moneys were subject to dotal rights, so that there might be persons in succession to them who would be entitled to the capital, they could not themselves receive the capital and divide it, there is, I do not say conclusive evidence, but there is evidence that he held that sum for investment in this sense, and in this qualified sense only, that he, like themselves, was to look out for an investment, and, if he found an investment, to communicate with them and ascertain whether it was satisfactory, they in the meantime looking out for investments themselves. The fact that one of them found an investment, and the other had been looking out for it, seems to my mind to be evidence that there was no definite trust to the agent to invest without further consultation with them, and that, therefore, until any further directions should be given, which would be necessary before investment took place, it was held for safe custody and nothing else. A good deal of stress was laid upon an expression in which it was said that he had made himself answerable for the investment. I

1891.

IN RE
BELLEN-
CONTRÉ.

Wills, J.

(1) 41 L. T. (N.S.) 448.

1891

IN RE
BELLEN-
CONTRE.

Wills, J.

have already pointed out that I do not think that is at all the meaning of the French term, and that "J'en réponds," in my opinion means, "I will answer for it," in this sense, that "I am perfectly confident I shall be able to find an investment," not that "I make myself responsible to invest it without anything further." It seems to me, with regard to those four offences, that there is distinct evidence to go to a jury, and, therefore, evidence sufficient to justify the committal by the magistrate for extradition. I think, also, that the objection that because some of the charges are not within the Extradition Treaty, therefore the warrant is bad, and the man is to be set at liberty, cannot be maintained. It seems to me that the warrant is general. It speaks of committal for crimes of a certain specified kind, which are described in number 18 of article 3 of the Treaty, and it is sufficient, if there are facts which are evidence that such crimes have been committed. The warrant is statutory in its form, and is not to be construed as an ordinary English common law document, and it is not at all necessary, in my judgment, that there should be anything like the same particularity that there would be in respect of the warrant of committal to the gaols of this country under ordinary circumstances. For these reasons, I am of opinion that this habeas corpus ought not to issue.

Rule discharged.

Solicitor for the prosecution: *The Solicitor to the Treasury.*

Solicitor for the prisoner: *S. Myers.*

P. B. H.