

**Extradition From Foreign Country—Procedure.**

In order to extradite a fugitive from justice from Canada, it is necessary to have a statement of the County Attorney respecting the crime for which the party is wanted, an affidavit of the Sheriff or some other responsible party as to the flight setting up the

facts, and a copy of the information and original bench warrant, if the information has been filed, otherwise certified copy of the complaint, and original warrant of arrest issued by justice of the peace, and in addition, the original deposition made in triplicate or certified copies thereof, of at least two witnesses testifying to the material facts on which the information or warrant was issued. All of these papers, as well as the signatures of officers, must be certified to. There must be three complete sets of the papers transmitted to the Governor, and the Governor must transmit the same to the Secretary of State of the United States, with request for the extradition of the fugitive, and the Secretary of the U. S. will thereupon make requisition upon the government of Great Britain for the extradition.

Helena, Montana, May 16, 1905.

H. S. Green, Esq., County Attorney, Great Falls, Montana.

Dear Sir:—In compliance with your request over the telephone for an opinion as to the method of procedure in extradition of defendant Cameron from Canada on the charge of grand larceny, I respectfully submit the following:

The crime of grand larceny is an extraditable offense under the treaty between the United States and Canada. I herewith enclose you a set of blanks used by the governor of this state for requisitions of fugitives in other states, which will be of assistance to you in preparing the requisition papers to be used in the Cameron case, changing, of course, the demand from that of governor to a requisition of the president to demand of the government of Great Britain. It will be necessary for you to have the following papers: Statement of the county attorney, substantially in the form of the blank herewith enclosed; also an affidavit of the sheriff, or some other responsible party, as to the flight, setting up the facts in the form herewith enclosed; also copy of the information and original bench warrant, if an information had been filed, otherwise certified copy of the complaint and original warrant of arrest issued by the justice of the peace; also the original deposition, made in triplicate, or certified copies of the original deposition, of at least two witnesses, testifying to the material facts upon which the information or complaint has been issued. All these papers must be certified to, as well as the signatures of the officials. For instance, if a certified copy of the complaint issued by the justice of the peace is used, the clerk of the court must certify to the official signature and of the fact that he is a justice of the peace. Then you will have to have a certificate of the secretary of the state as to the signature and authority of the clerk of the court. On the other hand, if certified copies of the information are used, they, of course, are certified by the clerk of the district court, and his official signature and authority is certified to by the secretary of state.

There must be three complete sets of these papers. In other words, three sets of the affidavit of the county attorney and of the affidavit of

flight and three certified copies of the complaint or information; three original bench warrants or warrants of arrest, and three original depositions of each witness, or three certified copies of the depositions. The affidavit of the county attorney and the person making the affidavit as to flight, and the depositions of witnesses, should be taken before the clerk of the district court instead of a notary public, so that one certificate of the secretary of state will apply to all signatures of the clerk of the court.

These three sets of papers are transmitted to the governor of Montana, whereupon he transmits the same to the secretary of state of the United States, who makes requisition on the government of Great Britain for the extradition of the fugitive.

If you have not got Cameron under arrest in Canada at the present time, and wish to do so before making application for requisition papers, you can have a certified copy of the complaint and warrant of arrest, or the information and bench warrant, together with the depositions of at least two witnesses showing the facts in the case, made out and turned over to the sheriff or the person whom you wish to have designated as the agent of the United States, and he can take such certified copies, certified by the clerk of the district court, and appear before a judge in Canada and make personal affidavit as to the authority of the justice or judge issuing such papers; whereupon the judge will issue a warrant for the arrest of the defendant there. Under the Canadian laws the sheriff or agent of the United States must hold the defendant there fifteen days in order to give him time to institute habeas corpus proceedings, or any other remedy he may seek to invoke to prevent extradition. On the other hand, if the defendant, after arrest in Canada, is not returned to the United States inside of sixty days, that is grounds for his release from custody there, upon a writ of habeas corpus.

I also enclose you a copy of the rules issued by the governor of the State of Montana relating to application for requisition between States, which may be of some assistance to you in preparing requisition papers for the extradition of a person from a foreign country.

Trusting that the above information, together with the blanks and rules I have herewith enclosed, will enable you to get out the necessary papers, I remain,

Yours very truly,

ALBERT J. GALEN,  
Attorney General.