mitted within the jurisdiction of the United States of America any of the crimes enumerated or provided for by the treaty, it shall be lawful for any (certain judges and officers, among whom is the Recorder) to issue his warrant for the apprehension of the party so charged, that he may be brought before such judge or other officer, and upon the said person being brought before him under the said warrant, it shall be lawful for such judge, &c., to examine upon oath any person or persons touching the truth of such charge and *upon such evidence as according* to the laws *of this Province would justify the apprehension* and committal for trial of the person so accused if the crime of which he shall be so accused had been committed therein, it shall be lawful for such judge or other officer to issue his warrant for the commitment of the person so charged to the proper jail, there to remain until surrendered according to the stipulation of the said treaty, or until discharged according to law, and the judge shall thereupon forthwith transmit or deliver to the Governor a copy of all the testimony taken before him, that a warrant may issue upon the requisition of the United States for the surrender of such person pursuant to the said treaty."

Nothing in this act contained requires that the evidence adduced against the accused should be set forth in the warrant of commitment, and referring to the forms in use or directed by statute to be used in other cases of alleged crime, they do not contain the evidence by which the charge is so far supported as to justify a committal. The form given in the act of the Imperial Parliament 8 & 9 Vic. chap. 121, does not render it necessary; and as to this branch of the question, it states, "forasmuch as it hath been shown to me upon such evidence as by law is sufficient to justify the committal to jail of the said A. B., pursuant to an act, &c., entituled, &c., that the said A. B is guilty of the said offence." The present commitment runs thus: "And whereas, the said evidences so taken before me upon oath as aforesaid, is such as according to the laws, &c. (following the language of the statute) I take it that the word "forasmuch" is as much a word of recital as the word "whereas." Each word as used involves the assertion of the fact as recited, and that fact is that such evidence as the law renders necessary has been adduced before the officer issuing the warrant.

The statute itself affords a complete answer to the other objections—for it gives the authority to arrest and commit without the previous intervention of the Governor General and without requiring any previous proceedings in the United States.

Then, upon the sufficiency of the evidence to justify the apprehension and committal for surrender of the prisoner.

Before discussing this, I must observe that I know of no authority—nor of any practice so established as to be deemed recognized as authority—for issuing a writ of *certiorari* in vacation, returnable before a judge in Chambers. The writ is, I believe, one which must be returnable before the court in *banc.* and the form of it, as given in the books, at which I have looked, is always so, and in criminal cases in England it formerly, and I apprehend still, issues only out of the court of Queen's Bench, and is made returnable on a day in term, "before us at Westminster," or "before us, wheresoever," &c. I mention this to prevent this case being drawn into a precedent, so far as I am concerned. No objection is raised by the counsel for the prosecution, and they have discussed the evidence as if regularly brought under consideration. I have no doubt writs of *certiorari* have been issued in a similar form before, in this Province, without objections—but they are not warranted by English practice. The teste of the present writ is also erroneous (1864 for 1865), but the mistake becomes of no consequence.

The first point taken was that it appears that the prisoner is a native-born subject of Her Majesty, and therefore does not come under the extradition treaty, or the statute passed to give it effect. Reference was made on this subject to statute 31 Car. 2, ch. 2, sec. 12. This objection was disposed of during the argument. The statute 24 Vic. is large enough to embrace all persons, subjects, denizens, or aliens, who have committed the crimes enumerated, in the United States and who are found in this Province. It is sufficient to read the 12th section of the 31st Car. 2nd, to see that it can have no application to a proceeding like the present

It was further objected that the prisoner is proved to be an officer in the service of the Southern Confederacy; that there is an existing state of war between that Confederacy and the United States of America; that this state of war gives rise to, as between the belligerents themselves, certain rights acknowledged by the law of nations, and among them an immunity as regards all acts of hostility done either in the enemy's country or against the lives and property of the enemy's subjects and citizens; that the act charged as robbery was an act done in the prosecution of lawful hostilities—and though committed within the territory of the United States, was not a crime against the municipal laws of that country; that Great Britain has recognised this state of war, and has, by a declaration of neutrality, admitted the existence in each, of those rights which belong to belligerents. Hence it is argued that the judicial authorities of this country cannot treat such acts, as the prisoner is charged with committing under the circumstances, as appearing as crimes such as the extradition treaty was intended to apply to.

Such, concisely stated, I understand, are the grounds of the application for the prisoner's discharge, for the purpose of a decision. I assume, though I do not adjudge, that the evidence is properly before us, and that a decision must be founded upon a careful examination and consideration of the whole of it.

It is established that the alleged state of war exists. The Queen's proclamation puts the question at rest, while it recognizes and declares the obligations arising from the neutrality to be observed by the Queen's subjects towards the belligerents.

Then the particular facts set forward appear to be that the prisoner is a British-born subject, who, by entering into the naval or military service of one of the belligerents has contracted engagements at variance with his proper duty as a British subject. It is asserted on his behalf,