

terms "in their several jurisdictions" in their broad signification. I think it more consistent with the scope of the Statute and the duties to be performed that they should be considered as applying to their judicial as well as their territorial jurisdiction, it being, I think, unreasonable to suppose that a Justice of the Peace, who cannot receive an information on a charge of piracy, or examine into the truth of such charge if cognizable in this Province, should, if committed in the United States, determine on the sufficiency of the evidence according to the laws of this Province if the crime was committed here; or in like manner that the Commissioners authorized solely to receive information and commit for trial in cases of offences on the high seas, should deal with crimes over which if committed in this Province they have no jurisdiction; and from this construction no possible difficulty can arise, because for every crime named in the Statute we have either the Justices of the Peace or other persons having power to commit for trial; so that in this case when it appeared by His Excellency's Warrant that the crime charged was Piracy, Mr. Gilbert, whether as Police Magistrate or Justice of the Peace, not having jurisdiction over such an offence and no power to commit for trial a person charged with Piracy, could have referred the matter to the Judge of the Court of Vice Admiralty, or some other one of the Commissioners having authority over that offence and power to commit for trial persons charged therewith. To confine the Magistrates and officers to their respective jurisdictions is, in my opinion, in no respect to conflict with any clause in the Treaty but in harmony with it, and in furtherance of a proper and discreet execution of its stipulations.

But assuming the Requisition right and that the Magistrate had jurisdiction, we must consider the third Point. The question here raised was argued as if I was sitting in the character of a Court of Review or Error on the decision of the Magistrate on the facts proved before him. Such, I think, is not the case. The duty of determining on the sufficiency of the evidence is cast on the Magistrate or other officers. He is the person to be satisfied that the evidence justifies the apprehension and committal for trial of the persons accused. The amount and value of that evidence is for his determination. A Judge of the Supreme Court might think the evidence of guilt strong and of innocence weak, or vice versa, but the law has vested the Magistrate with the power of weighing and deciding on the effect of the evidence and it is the result on his mind that is to determine its sufficiency or insufficiency. It is a judicial discretion with which he is vested, which, I think, is not open to question on *Habeas Corpus*, and cannot be taken from him and assumed by a Judge of the Supreme Court. If it was manifestly apparent that the evidence showed that no offence had been committed or that the party was unquestionably innocent and therefore there was really no matter of fact or law to be tried, no matter in

which the Magistrate could exercise a discretion or judgment, then the case would be very different; but is such the case before us? That the vessel was seized and by force taken from the Captain and crew on the high seas, is not disputed. Unanswered this is a *prima facie* case of Piracy, and the burthen is cast on the accused of justifying this apparently wrongful act. The justification set up is that hostilities were existing between the United States and the Confederate States of America, and this seizure was made under a Commission from, or by authority and on behalf of, the Confederate States, and that therefore it was an act of legitimate warfare and not of a piratical character. This, on the other hand, is denied, and it is alleged that the claim to act under the authority of the Confederate States is mere pretence and color to disguise and cover an illegal depredation. The object of privateering in general, is not, as Mr. Kent observes fame or chivalric warfare but plunder and profit: but at the present day the rights of private armed vessels and private belligerents cannot be doubted. Unless restrained by Treaty stipulations the right to commission private armed vessels is, by the laws of nations, esteemed a legitimate means of destroying the commerce of an enemy, and captures made by private armed vessels of one belligerent, even without a Commission, though not in self defence, are not regarded as piratical either by their own Government or by the other belligerent State. It does not indeed vest the enemy's property thus seized in the captors, but the seizure would be declared a prize of war to the government of the captors; and it is equally true that neutrals taking commissions as privateers and acting on them are likewise free from the imputation of Piracy. They may make themselves amenable for the violation of the laws of their own country, and may denude themselves of the right to claim her protection to shield them from the consequences of their acts, but they cannot be dealt with by the belligerent against whom they are acting as pirates. But as neutrals they stand in a very different position from belligerents. Belligerents, we have seen, may make captures without commissions. Neutrals can only protect themselves by commissions from, or by acting under authority of, the belligerent Government, or on board commissioned vessels, or under duly authorized officers. They cannot, without any commission or authority, fit out in a neutral country a hostile expedition against a power at peace with such country, and, under pretence of acting in the name of, or on the behalf, of a belligerent power, commit acts on the high seas that would, unless protected by belligerent rights, be acts of Piracy, and not be held responsible criminally for such acts. And therefore it behooves persons not belligerents but subjects of a neutral power engaging in acts of hostility, if they wish to escape the imputation of criminality, to be well assured when they depredate on the shipping of a nation at peace with the one to whom they owe allegiance, and in opposi-

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