criticism as merely called in question the weight or preponderance of proof, conceding that its appreciation should be accepted as found by the judge making the preliminary enquiry.

It was contended that Weber, the party who claimed to have been defrauded by the passing of the counterfeit money, should have been produced as a witness, but his affidavit and the evidence of the detective McIlrath identified the prisoner sufficiently. Objections were further made that Weber's affidavit was taken, *exparte*, after the arrest and was sworn to before a commissioner in place of a Justice of the peace. These are answered by the rulings in the cases of *Martin*, U. C. L. J. for 1868, p. 124, and of *Counhaye* 8 L.R., Q.B. p. 410. The affidavit is only required to be made before a party authorized to receive it, not necessarily by a Justice of Peace, and it is proved that Henry H. Hallett was vested with the powers of a Magistrate and was duly authorized to take this evidence. I must hold it well taken.

The next objection is as to the finding of the Grand Jury. There would appear to be sufficient evidence without this document. No necessity therefore exists for a formal ruling as to its admissibility. Judge Ramsay in the case of *Rosenbaum*, 18 L. C. J. 200, seemed to have inclined to consider it not legal evidence, and excluded it, I think, rather on the principle that it was the safest course, than from any very decided opinion that it was wholly inadmissible; and in the case of *Regina* v. *Brown*, 31 U. C. C. P. R., p. 484, it was held admissible by Chief Justice Wilson (confirming Judge Armour's opinion and also as auxiliary evidence by Mr. Justice Galt. I myself lean to the opinion of its admissibility on the ground that it is a statement on oath, that is, on the oath of the jury who held the inquest, although hearsay as regards the evidence taken before them, and also on the ground that it is the finding of a competent foreign tribunal having jurisdiction over the subject matter with which they dealt. The finding of a grand jury in this Province would of course be a full justification for committing and putting the accused party on his trial (32-33 Vic. cap. 30, sec. 4 and 5. It is not disputed that the document is sufficiently authenticated.

These objections being disposed of I come to deal with the law of the case.

As to the pretended irregularity of the arrest, the party accused was in custody before a tribunal competent to inquire into the demand for his extradition, witnesses were examined in his presence and cross-examined by him, and after a protracted enquiry he was committed for extradition. It is not competent for him to pretend that he was wrongfully taken into custody. It is enough that being in custody a sufficient case was made out against him to justify his commitment for extradition. It was so held in *Martin's* case, U. C. L. J. for 1868, p. 124.

As to the form of the commitment: It is the one appended to the Dominion Statute of 1877, and ought to be sufficient if that statute be in force, although for my own part I do not think it well framed or well conceived to carry out the spirit of the law. Had it not been made a statutory form I should scarcely have been disposed to hold a committal good that did not contain a declaration by the committing judge, that the evidence adduced was sufficient according to the laws of the Domiuion of Canada, or the Province thereof where he was committed, to justify the apprehension and committal of the prisoner for the crime of which he stood accused. I am not prepared to say a commitment would of necessity have to be declared bad, although it invoked as part of the judge's authority a statute which was not in force, or even adopted a form given in that statute, provided it otherwise contained all the essential averments to meet the necessity of the case according to the treaty and the law of extradition, then actually effective. In such case I think the reference to a statute not in force might be considered mere surplusage, but I make no express ruling on this point, I do not consider it necessary.

It is urged that the Chief Justice exceeded his authority by including in the commitment the words following: "And forasmuch as I have determined that the said William Campbell Phelan should be surrendered in pursuance of the said Act for the causes aforesaid," and the case of *Zink*, 6 Q.L.R., p. 260, was cited to show that the committing Judge has no power to decide that the extradition should take place. I would have so held in this case were it not that I find that the commitment in this respect follows the form appended to the Dominion