

U. S. Rep.]

IN THE MATTER OF THOMAS PRIMROSE, &amp;c.

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of Canada authorized to sign and issue such warrants as such Justice of the Peace. And I do further certify that the annexed copies of information or depositions, warrant and certificate, are properly and legally authenticated, so as to entitle them to be received in evidence, in the tribunals of Canada, of the criminality of the person charged therein of robbery. And I do further certify that the signature, L. Lawrason, to the annexed certificate, is in the proper handwriting of him the said Lawrence Lawrason.

Given under my hand and seal of office, at the City of Montreal, in the Province of Quebec, and Dominion of Canada, this fifth day of Oct. 1870.

(Signed) WM. H. CALVERT,  
Vice-Consul-General.

Evidence was adduced on the part of both claimants and prisoner. On the part of the former it was proven that on the evening of the 1st day of April, 1870, one John Smith was at a tavern, kept by one Lively, at Westminster, in the county of Middlesex, Ontario, in company with a pensioner named Dunn, who had that day drawn his pension-money. The prisoner and several other persons, charged as his accomplices in the subsequent robbery, were also there, drinking with Smith and Dunn, according to Smith's evidence, who says that about half-past seven o'clock that evening he started to go out of the tavern, and was followed by the prisoner, who insisted upon seeing him (Smith) home; that after he had proceeded about three rods from the door of the tavern, he was caught from behind and pinioned; that prisoner raised his (Smith's) arm, and forced it back so as to cover his mouth, bending his head back; he says he was also struck on the head with something; his pockets were then searched, and some money and articles extracted therefrom. Upon regaining an upright position, he recognised prisoner, who still had hold of his arm. After being robbed he was allowed to go at liberty, and at once made his way to the London police station, and there stated to the chief that he had been robbed at Westminster, and was afraid Dunn would share the same fate. The chief declined interfering in the matter, as Westminster (which is divided from London by Clarke's Bridge) was not within his jurisdiction. A man named Hughes testified that he passed Lively's tavern at six o'clock on the evening in question, and saw prisoner and Smith there, as also those charged as prisoner's accomplices. The chief of the London police corroborated Smith's evidence as to the complaint made by him, and further stated that Smith, although he appeared to have been drinking, told a straight story. This, together with evidence that prisoner had not been seen in London or thereabouts since the robbery, closed the case of claimants.

The defence set up was, that Primrose was not on the Westminster side of Clarke's Bridge from five o'clock until half-past nine o'clock on the evening of the first day of April, and therefore could not have committed the offence charged. A man named Gagan stated that he was with prisoner on the London side of the bridge all that time; Albert, a brother of prisoner, said he saw Gagan and prisoner on the London side of the bridge that evening; and Edward Primrose, another brother, stated that he was a brakeman on the Great Western Railway, and that on the

day in question his train (a construction train) arrived at London from Windsor about four o'clock, p.m., and on going on to the platform of the station he met his brother (the accused) and Gagan, and remained with them until half-past eight o'clock, p.m., with the exception of an interval from a quarter past five o'clock to six, p.m., when he was at tea. Other evidence was adduced to show that Smith was not at Lively's when the alleged robbery took place. On this evidence rested the case for the defence.

In rebuttal, counsel for claimants produced the conductor of the train on which Edward Primrose was brakeman, and he testified that on the day in question he started from Windsor with his train at 10.50 a.m., and did not arrive at London until 8.25 p.m.; and that Edward Primrose was with him on said train all that time, as one of his brakemen. He also produced his time-book (kept by all conductors), in which entries were made each day of the departure and arrival of his train at each station, which bore out his testimony, and in which Edward Primrose's name was entered as brakeman on the day in question.

This closed the evidence on both sides, the taking of which had extended over several months, and on the 20th December last the case was argued before the said commissioner.

J. Cook, of Buffalo, counsel for the prisoner, moved for his discharge:—

As to the fact of the robbery having been committed, the claimants must rely altogether upon the evidence of Smith; and such being the case, Smith's evidence was contradicted in so many particulars by the evidence on the part of the defence, that it was unsafe to place implicit reliance upon it. The facts disclosed raise a very strong suspicion, if not presumption that Smith had robbed his friend Dunn, and in order to avert suspicion had accused the prisoner and other parties of the crime alleged. The commissioner must be satisfied, first, that an offence had been committed; second, that Primrose is the guilty party. The evidence produced on the part of the defence prove a complete *alibi*, and a sufficient doubt is raised as to the guilt of prisoner to entitle him to a discharge. If the commissioner should find against the prisoner he does not simply commit him to the courts of the United States, as a proper case to be presented to a grand jury of said courts, but his decision is of vastly more importance, as he would commit him to be taken to a foreign land, to be dealt with by strangers, amongst whom might be one who might regard his own safety as depending upon a conviction of the prisoner. If prisoner is extradited upon the suspicious testimony of Smith, uncorroborated as it is, where is the protection which the Government of the United States guarantees to those who are entitled to it?—for it has been well observed, that if this doctrine were to prevail, the liberty and character of every man in the country would be placed at the mercy, not of the examining magistrate (for he would have to assume that he had no discretion), but of any corrupt and infamous individual who might think proper to make a positive oath that a felony had been committed by the person whom he accused. The commissioner is to judge of the credit to be given to the