counsel had submitted this objection to his honor the Recorder, and he begged to submit it to this Court. He contended that the only evidence the Court could look at was the evidence for the prosecution, because the statute spoke only of evidence of "criminality," and because the statutes spoke of nothing but this particular kind of evidence. The moment the Court went into the consideration of evidence for the defence, they began a trial of fact, to which they were not competent. But did the facts show an act of war or an act of robbery? He started with this axiom, that no use could be made of neutral territory for the purposes of war, and that if any use were made of it for offensive purposes, that was not an act of war. Mr. Richards had shown by authorities that if the act of capture were commenced from neutral territory, there had been no legal capture; that in fact there had not been an act of war.

Mr. Justice Richards—You must not lose sight of the fact that all that is said on that question is for the purpose of determining what the consequences of that act in a neutral territory are.

Mr. Harrison.—But it shewed that under these circumstances, there was not an act of war. If it was, then the responsibility was shifted from the individual to the State. But he contended that these cases of capture decided that where any act was commenced on neutral territory, it was not an act of war. (See *Santissima Trinidad*, 7 Wheaton 283; also 9 Trench 359; *Santa Maria*, 7 Wheaton 490; *Grand Pere*, 4 Wheaton 471; *Diana Astora*, 4 Wheaton 571.) What constituts an act of war, is a question of law. In this case the prisoner took upon himself the responsibility of shewing that what he did was an act of war. He must do that beyond all question. Now, when a man acted under authority, this other question also arose—did he do so honestly or not? That being settled in the affirmative, we must then find whether the acts he did were acts of war. But the question *quo animo* is peculiarly a question for a jury. (*Reg* v. *Hare*, 1 Leach C. C. 270; *In re Anderson*, 11 U. C. C. P. 60, Draper, C. J.; *In re Kane*, 11 How. U. S. 110, Catron, J.; *In re Collins* (the *Chesapeake* case) p 35; Opinions of the Attorneys-General of the United States, 204, 211; *In re Barnett*, 11 L. T. N. S. 488). He (Mr Harrison) laid down this proposition—that taking property by force from the person of another was robbery. The exception was when it was taken for purposes of war. The Duke of Wellington, when in Spain, hanged men who committed robbery. They were tried by court-martial; but this did not prove that they would not have been amenable to the civil tribunals of the country. Although a man had a commission he might still commit an act of piracy, for he might act dishonestly (*United States* v *Clintock*, 5 Wheat. 141). It is not enough for those representing the Southern Government to say that such things were done at Savannah and New Orleans by the United States officers. We had to look at these things as neutrals. There was no reason if they did wrong there why we should countenance wrong here. But he (Mr. Harrison) begged again to call the attention of the court to the fact that the moment we got into this discussion, we found ourselves trying a question of fact. Next referring to the manifesto of Mr. Jefferson Davis, the learned counsel contended that it did not prove an antecedent authority; that it merely said an authority for a certain expedition had been given. But accepting it for what it was worth, it said to the prisoner "You must not violate neutral territory." Plainly then, he had exceeded his authority. He was authorized to do a certain act, provided he did not violate neutral territory. But he did violate neutral territory, therefore he was not authorized. Having exceeded his authority, he was a wrong-doer *ab initio*. But however this might be, the laws of war exempted private property. (See *Lucas* v. *Bruce*, 4 American Law Register 98; *Mostyn* v. *Fabrigas*, Cowp. 180). As to the question of ratification, he (Mr. Harrison) contended that the Southern Government could not discharge the prisoner from his obligations. The ratification might make the Southern Government responsible as accessories after the fact, but it could not relieve the prisoner of his responsibility if he had committed a criminal act. The learned counsel concluded by referring the court to the result of *McLeod's* case (6 Webster's Works 247; 25 Wendell 483) to shew that we have no reason to doubt but that prisoner will get a fair trial in the United States, and argued that so long as the treaty existed we are bound to believe he will; for the treaty is based on the confidence which each nation places in the honest and impartial administration of justice by the other.

Mr. Cameron briefly replied, and in answer to the remarks of Mr Richards with regard to the sinignificant force that pretended to attempt the capture of the steamer *Michigan*, said that the number of outsiders who were ready to assist in the enterprise had not been ascertained, and that Mr. Richards appeared to forget that there were also on the island no less than twenty-six hundred Confederate prisoners ready to assist their friends, and that they knew the attempt was about to be made to liberate them. He contended that the belligerent character of the prisoner had been fully proved, and said that the British Government was bound as firmly to uphold the Confederate States in their belligerent rights as it was to carry out the provisions of the Ashburton Treaty with the United States of America. He cited Twiss 441, 442.

Draper, C. J.—Mr. Cameron objected to the sufficiency of the warrant and to the sufficiency of the evidence adduced before the Recorder to justify or sustain the warrant.

As to the warrant, he contended that it ought to set out the evidence upon which it was issued; that it should show that the Governor General authorized and directed the Recorder to take proceedings against the prisoner, or that a proceeding against him had been originated in the United States.

I think none of these objections are sustainable. The authority of the Recorder is derived from and under the second section of chap. 6 of the Provincial statute 24 Vic, which enacts that "upon complaint made upon oath or affirmation (in cases where affirmations can be legally taken instead of oaths) charging *any person* found within the limits of this province with having com-