charges and disbursement in the matter of the reference between Charles Widder and the Buffalo and Lake Huron Railway Company, and delivered by him to that company, should not be referred to the master for taxation, and why the said McDermott should not give all proper credits, and why the master should not tax the costs of the reference and certify what upon such reference should be found due in respect of such bill and demand and the costs of such reference, on grounds disclosed in affidavit and papers filed.

The affidavit on which the summons was obtained, was that of E. B. Wood, solicitor of the company, showing that the bill of costs sought to be referred, had been served on the secretary of the company on 1st September, that in the belief of the deponent the award in respect of which the charges were made was invalid, that notice of desistment under sub sec. 16 of sec. 11 of Con. Stat. C., cap 66, respecting railways, had been served on the arbitrators before they made their award, and also upon McDermott the attorney for Widder, that under the operation of the statute the company became liable to Widder for costs by him incurred and damage sustained by such desistment, that the bill sought to be referred was served on the company, as containing the items of the damage and costs incurred by Widder on the reference, that the company were ready and willing to pay the amount of the bill or what should be found to be due thereon upon taxation.

The bill which amouted to £126 3s. 1d., contained charges for proceedings had on the reference, including items for business done in the Court of Queen's Bench, such as applying for and obtaining writs of subpœna, to compel the attendance of witnesses.

John McBride, showed cause, contending that the only power to tax a bill of the nature of that delivered, is under Con. Stat. C., cap. 66, sec. 11, sub-sec. 12, which provides that the costs of the arbitration if not agreed upon, may be taxed by the County Judge, and that the taxation should be had before him, and not before the master of the court.

Robert A. Harrison, supported the summons, contending that under Con. Stat. U. C., cap. 35, the court or a judge possesses a general jurisdiction to refer an attorney's bill for work done in either of the Superior Courts of Common Law to taxation, that where a bill delivered contains some items of that kind it draws with it the remaining items in the bill, though not for work done in a court so as to render the whole bill liable to taxation by the officers of the court, that the special provision under the railway act, to which reference was made by Mr. McBride, is not intended to exclude the general jurisdiction of the court or a judge over attorneys in regard to their bills of costs, but rather is cumulative to it, the language being "may" not *must*, which by the interpretation act is permissive, not obligatory. He referred to Con. Stat. U. C., cap. 85, sec. 27; Con. Stat U. C, cap. 2, sec. 18, sub-sec. 2; *In Re Greenwood*, 10 U. C. L. J. 131.

John Wilson, J.—I am of opinion that this summons must be made absolute. It seems to me that Con. Stat. C., cap. 66, sec. 11, sub-sec. 12, does not deprive the court or a judge of their general jurisdiction, under Con. Stat. U. C., cap. 35, to refer an attorney's bill to taxation. I think this is a bill that ought to be referred to the master of this court under the latter statute, and shall so order.

Order accordingly.

In the matter of Thaddeus K. Clarke.

Foreign Enlistment Act, 59 Geo. III cap. 69, s. 4.—Form of Warrant of commitment.

A warrant of commitment under the Foreign Enlistment Act, 59 Geo. III cap. 69 s 4 reciting that Thaddeus K Clarke "was this day charged (not saying upon oath) before us," and without showing any examination by the magistrates, upon oath or otherwise, into the nature of the offence, commanding the constables or peace officers of the county of Welland to take the said Thaddeus K. Clarke into custody, was held sufficient.

A warrant of commitment under the statute, committing the prisoner until "discharged by due course of law," sufficiently complies with the statute, which provides for a commital until delivered by due course of law.

A warrant executed by two parties, and concluding "given under our hand and seal," held sufficient.

(Chambers, October 6, 1864.)

On the first day of October last, Mr. Justice Morrison, sitting in Chambers, upon the application of prisoner, who was detained in the custody of the keeper of the common gaol in and for the county of Welland, granted a writ of *habeas corpus* directed to the gaoler, commanding him to have the body of Thaddeus Kinsley Clarke under safe and secure conduct, together with the day and cause of his being taken, &c., before the Chief Justice of Upper Canada or other Judge of one of the Superior Courts of Common Law for Upper Canada, presiding in Chambers, immediately after the receipt of the writ, to do and receive, &c.

The learned judge who granted the writ indorsed upon it, at the request of prisoner's counsel, a memorandum to the effect that the presence of the prisoner was not required before the Judge.

On the sixth day of October last, the writ was returned by the gaoler, and to the writ as part of the return was annexed the following warrant:

Province of Canada, County of Welland, to wit: } To all or any of the Constables or other Peace Officers of the County of Welland, and to the Keeper of the Common Gaol in and for the said County of Welland.

Whereas Thaddeus K. Clarke, of Port Colborne, was this day charged before us, John Thompson and Matthew F. Haney, two of her Majesty's justices of the peace in and for the said county of Welland, on the oath of John J. Neff, that he the said Thaddeus K. Clarke, at Port Colborne, in the county of Welland, on the seventeenth day of September, one thousand eight hundred and sixty-four, did engage John J. Neff and Henry Miner to go to Buffalo and enlist as soldiers in the military service of the United States of America.

These are therefore to command you, the said constables or peace officers, or any one of you, to take the said Thaddeus K. Clarke and him safely convey to the common jail at Welland aforesaid, and there deliver him to the keeper thereof, together with this precept.

And I do hereby command you, the said keeper of the said common jail, to receive the said Thaddeus K. Clarke into your custody in the said common jail, and there safely to keep him until he shall be discharged by due course of law.

Given under my hand and seal this twenty-ninth day of September, in the year of our Lord 1864, at Humberstone, in the said county of Welland.

(Signed) John Thompson, J. P. [L S]
(Signed) M. F. Haney, J. P. [L.S.]

Robert A. Harrison asked leave to file the writ and return, and upon filing it moved for the discharge of the prisoner upon the following grounds:

1. That it was not shown that the prisoner had been charged *on oath*.
2. That it was not shown that the magistrates had examined into the nature of the offence *upon oath*.
3. That it was not shown that the magistrates had in any manner examined into the nature of the offence charged.
4. That unless there was both a charge on oath and an examination on oath, there was no jurisdiction to commit for trial.
5. That all things necessary to show jurisdiction should be made to appear on the face of the warrant.
6. That the warrant was for the commital of the prisoner until "*discharged* by due course of law," and not until "*delivered* by due course of law," which is the language of the statute.
7. That the warrant being executed by two justices, and only one seal, and given under "*my* hand and seal," &c., was bad.

He referred to Imperial Statute 59 Geo III. cap 69, s 4.

S. Richards, Q C., showed cause. He argued—

1. That the maxim *omnia presumunter rite esse acta* must be held to apply to warrants of this kind.
2. That a different rule prevailed in the construction of warrants granted by magistrates exercising a summary jurisdiction.
3. That it was not necessary in the warrant either to show a charge on oath or a hearing on oath.
4. That the expressions "discharged by due course of law" and "delivered by due course of law" were synonymous.
5. That the teste warrant, according to the decision *In re Smith*, 10 U. C L. J. 247, was sufficient.

Harrison, in reply, referred to Con. Stat Can. cap 102, sch. B.

John Wilson, J.—The statute 59 Geo III. cap. 69, s 4, enacts "that it shall and may be lawful for any justice of the peace,